BOARD BOOK OF NOVEMBER 12, 2015

J. Paul Oxer, Chair

Juan Muñoz, Vice-Chair
Leslie Bingham Escareño, Member
T. Tolbert Chisum, Member
Tom Gann, Member
J. B. Goodwin, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

A G E N D A
10:00 AM
November 12, 2015

John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas

CALL TO ORDER
ROLL CALL — **J. Paul Oxer, Chairman**
CERTIFICATION OF QUORUM

Pledge of Allegiance - ***I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.***

Texas Allegiance - ***Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.***

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

a) Board Meeting Minutes Summary for September 3, 2015 — **J. Beau Eccles**, Board Secretary

LEGAL

b) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Edgewood Manor Senior Apartments (HTC 99203 / CMTS 2275) — **Jeffrey T. Pender**, Deputy General Counsel

c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning March Street (HTC 70107 / CMTS 926)

ASSET MANAGEMENT

d) Presentation, Discussion and Possible Action regarding Material Amendment to Housing Tax Credit Applications — **Raquel Morales**, Director, Asset Management

14145 Glenwood Trails II Deer Park

e) Presentation, Discussion and Possible Action regarding Placed in Service Deadline Extensions

13071 Windy Ridge Austin
13109 Homestead Oaks Austin
13144 Mariposa at Pecan Park Pecan Park
13145 Mariposa at Elk Drive Burleson
13234 Wynnewood Family Housing Dallas
13252 Oak Creek Village Austin
13042 The Cottages at South Acres Houston
13044 Villas of Vanston Park Mesquite

MULTIFAMILY FINANCE

f) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

Marni Holloway
Director, Multifamily Finance

15419	Woodside Apartments	Palestine

g) Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution No. 16-004 and a Determination Notice of Housing Tax Credits for Williamsburg Apartments

h) Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-005 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

15608	Gateway at Hutchins	Hutchins
15610	Mercantile Apartments	Fort Worth
15611	Peoples El Shaddai Village	Dallas
15612	Brooks Manor Apartments	West Columbia
15613	Independent Missionary Village	Hitchcock
15614	Garden City Apartments	Houston
15615	St. James Manor Apartments	Dallas

i) Presentation, Discussion, and Possible Action regarding a Waiver of 10 TAC §10.101(b)(4) related to Mandatory Development Amenities and Determination Notices for Housing Tax Credits with another Issuer

15416	Woodland Christian Towers	Houston

BOND FINANCE

j) Presentation, Discussion, and Possible Action regarding the utilization of the Department's Mortgage Warehouse Facility in conjunction with the Department's Taxable Mortgage Program ("TMP-79") and possible corresponding modification of the Master Trade Confirmation and other program documents

Monica Galuski
Director, Bond Finance

k) Presentation, Discussion, and Possible Action regarding Resolution No. 16-007 authorizing application to the Texas Bond Review Board for reservation of the 2015 single family private activity bond authority carry forward from the Unencumbered State Ceiling

HOME PROGRAM

l) Presentation, Discussion, and Possible Action on an amendment to HOME Homeowner Rehabilitation Assistance Household Commitment Contract issued under Reservation Agreement 2011-0092 for the reconstruction of a single family home by Runnels County

Jennifer Molinari
Director, HOME Program

m) Presentation, Discussion, and Possible Action to authorize the issuance of an Amendment to the 2015 HOME Single Family Programs Reservation System Notice of Funding Availability ("NOFA") for Single Family Non-Development Programs, and publication of the amended NOFA in the *Texas Register*

SECTION 8 HOUSING

n) Presentation, Discussion, and Possible Action on the 2016 Section 8 Payment Standards for Housing Choice Voucher Program ("HCVP")

Brooke Boston
Deputy Executive Director

COMMUNITY AFFAIRS

o) Presentation, Discussion, and Possible Action directing Staff to take necessary actions to make temporary assignments to one or more network Providers, to Issue Requests for Applications, or to otherwise arrange for temporary program delivery of Community Services Block Grant ("CSBG"), Comprehensive Energy Assistance Program ("CEAP"), and / or Weatherization Assistance Program ("WAP") to ensure continuity of programs in areas otherwise at risk of a hiatus in Program Delivery

Brooke Boston
Deputy Executive Director

RULES

p) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter A, General Guidance, §23.2 Definitions; Subchapter C, Homeowner Rehabilitation Assistance, §23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements; Subchapter D, Homebuyer Assistance Program, §23.41 Homebuyer Assistance (HBA) Program Requirements and §23.42 Homebuyer Assistance (HBA) Administrative Requirements; Subchapter E, Contract for Deed Conversion Program, §23.51 Contract for Deed Conversion (CFDC) Program Requirements and §23.52 Contract for Deed Conversion (CFDC) Administrative Requirement; Subchapter F, Tenant-Based Rental Assistance Program, §23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements; and Subchapter G, Single Family Development Program §23.72 Single Family Development (SFD) Administrative Requirements, and directing that they be published for public comment in the *Texas Register*

Jennifer Molinari
Director, HOME Program

q) Presentation, Discussion, and Possible Action on orders repealing 10 TAC §§20.1 – 20.16, and the subsequent adoption of new 10 TAC Chapter 20 Single Family Programs Umbrella Rule, §20.1, Purpose; §20.2, Applicability; §20.3, Definitions; §20.4, Eligible Single Family Activities; §20.5, Funding Notices; §20.6, Applicant Eligibility; §20.7, Household Eligibility Requirements; §20.8, Single Family Housing Unit Eligibility Requirements; §20.9, General Administration and Program Requirements; §20.10, Inspection and Construction Requirements; §20.11, Survey Requirements; §20.12, Insurance Requirements for Acquisition Activities; §20.13, Loan, Lien and Mortgage Requirements for Activities With Acquisition; §20.14, Amendments to Agreements and Contracts and Modifications to Mortgage Loan Documents; §20.15, Compliance and Deobligation; and §20.16, Waivers and Appeals, and directing their publication in the *Texas Register*

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities, October 2015

Michael Lyttle
Chief, External Affairs

b) Report on the Closing of the Department's 2015 Series A Single Family Mortgage Revenue Refunding Bonds and 2015 Series B Single Family Mortgage Revenue Bonds

Monica Galuski
Director, Bond Finance

c) Status Report on the HOME Program

Jennifer Molinari
Director, HOME Program

d) Report regarding the 2016-2017 Housing Trust Fund Biennial Plan

Homero Cabello
Director, SF OPS

e) Report on Department's Fair Housing Activities

Brooke Boston
Deputy Executive Director

ACTION ITEMS

ITEM 3: REPORTS

a) Report on the meeting of the Audit Committee

Mark Scott
Director, Internal Audit

b) Report on Asset Management Issue

Tom Gouris
Deputy Executive Director

ITEM 4: INTERNAL AUDIT

Presentation, Discussion and Possible Action on approval of the Fiscal Year 2016 Internal Audit Work Plan

Mark Scott
Director, Internal Audit

ITEM 5: BOND FINANCE

Presentation, Discussion, and Possible Action on Resolution 16-006 Authorizing the Issuance, Sale and Delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2015 Series C (Tax-Exempt and Taxable) (the "2015C Bonds") and Single Family Mortgage Revenue Refunding Bonds, 2015 Series D (Taxable) (the "2015D Bonds"); Approving the Form and Substance of Related Documents; Authorizing the Execution of Documents and Instruments Necessary or Convenient to Carry Out the Purposes of this Resolution; and Containing Other Provisions Relating to the Subject

Monica Galuski
Director, Bond Finance

ITEM 6: MULTIFAMILY FINANCE

Presentation, Discussion, and Possible Action regarding approval of the 2016 Multifamily Direct Loan Notice of Funding Availability

Marni Holloway
Director, Multifamily Finance

ITEM 7: RULES

a) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication in the *Texas Register*

Marni Holloway
Director, Multifamily Finance

b) Presentation, Discussion, and Possible Action on orders adopting the repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and orders adopting the new Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*

c) Presentation, Discussion, and Possible Action to adopt the 2016 Multifamily Programs Procedures Manual

d) Presentation, Discussion, and Possible Action on order adopting the repeal of 10 TAC Chapter 10 Subchapter D concerning Underwriting and Loan Policy and an order adopting new 10 TAC Chapter 10 Subchapter D concerning Underwriting and Loan Policy and directing its publication in the *Texas Register*

Brent Stewart
Director, Real Estate Analysis

e) Presentation, Discussion and Possible Action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter E concerning Post Award and Asset Management Requirements and an order adopting new 10 TAC Chapter 10 Subchapter E concerning Post Award and Asset Management Requirements and directing its publication in the *Texas Register*

Raquel Morales
Director, Asset Management

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS.

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

J. Paul Oxer
Chairman

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code, Chapter 551; including seeking legal advice in connection with a posted agenda item;

4. Pursuant to Tex. Gov't Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

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 or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on Board Meeting Minutes Summary for September 3, 2015

RECOMMENDED ACTION

Approve Board Meeting Minutes Summary for September 3, 2015

RESOLVED, that the Board Meeting Minutes Summary for September 3, 2015, is hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
September 3, 2015

On Thursday, the third day of September, 2015, at 9:36 a.m., the regular monthly meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140, John H. Reagan Building, 105 W. 15 th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J. Paul Oxer
- Dr. Juan Muñoz
- T. Tolbert Chisum
- Leslie Bingham Escareño
- Thomas H. Gann

J. Paul Oxer served as Chair, and James "Beau" Eccles served as secretary.

1) The Consent Agenda was approved unanimously by the Board with the following items modified by TDHCA staff prior to approval: Item 1(f) – Presentation, Discussion, and Possible Action on Corrections to Previous Program Year 2015 Emergency Solutions Grants Program Awards and the Associated Award of a Contract under the Program Year 2014 Emergency Solutions Grants Program; and Item 1(m) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer for #15405 Sagetree Terrace, Houston; #15407 Reserve at Quebec, Fort Worth; #15412 Timbers Apartments, Austin; and #15413 Martha's Vineyard, Dallas.

In addition, Item 1(l) – Presentation, Discussion, and Possible Action on Resolution 16-001 Authorizing the Issuance, Sale and Delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Refunding Bonds, 2015 Series A (Taxable) (the "2015A Bonds") and Single Family Mortgage Revenue Bonds, 2015 Series B (the "2015B Bonds"); Approving the Form and Substance of Related Documents; Authorizing the Execution of Documents and Instruments Necessary or Convenient to Carry Out the Purposes of this Resolution; and Containing Other Provisions Relating to the Subject – was moved to the Action Item agenda.

- Jolene Sanders, Easter Seals Central Texas, provided written comment in support of Consent Agenda Item 1(d) – Presentation, Discussion, and Possible Action to authorize the issuance of the 2015 HOME Investment Partnerships Program ("HOME") Single Family Programs Competitive Award and Reservation System Notices of Funding Availability ("NOFAs") for Single Family Non-Development Programs, and the publication of the NOFAs in the Texas Register

2) Jaime Longoria, Executive Director of Community Service Agency of Hidalgo County, spoke on behalf of Hidalgo County Judge Ramon Garcia and the Hidalgo County Commissioners Court to thank TDHCA staff for all of the help they have provided to the county. Mr. Longoria also read into the record a resolution of appreciation passed by the commissioners court in recognition of TDHCA staff.

3) Action Item 1(l) – Presentation, Discussion, and Possible Action on Resolution 16-001 Authorizing the Issuance, Sale and Delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Refunding Bonds, 2015 Series A (Taxable) (the "2015A Bonds") and Single Family Mortgage Revenue Bonds, 2015 Series B (the "2015B Bonds"); Approving the Form and Substance of Related Documents; Authorizing the Execution of Documents and Instruments Necessary or Convenient to Carry Out the Purposes of this Resolution; and Containing Other Provisions Relating to the Subject – was presented by Monica Galuski, TDHCA Director of Bond Finance. The Board unanimously approved staff recommendation on the aforementioned actions.

4) Action Item 3(a) – Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-003 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2015 Waiting List for Cheyenne Village Apartments and Chisolm Trace Apartments and Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics – was presented by Teresa Morales, Acting Director of TDHCA Multifamily Finance. The board unanimously approved staff recommendation to approve the inducement resolution and the filing of the aforementioned applications.

5) Action Item 3(b) – Report and Discussion regarding the need to clarify 10 TAC §10.3(a) definition of "Qualified Elderly Development" in light of recent HUD guidance on age-restricted developments – was presented by Tom Gouris, TDHCA Deputy Executive Director, with clarifying information from Tim Irvine, TDHCA Executive Director, and Megan Sylvester, TDHCA Legal. The Board heard the report and took no further action.

6) Action Item 4 – Presentation, Discussion and Possible Action regarding Amendments to HOME Direct Loan Terms for Allegre Point (HTC # 11123, HOME # 1001576) – was presented by Raquel Morales, TDHCA Director of Asset Management. The Board unanimously approved staff recommendation to approve the amendments.

7) Action Item 5(a) – Presentation, Discussion, and Possible Action on appeal of the recommended HOME loan terms in connection with the application under the Multifamily Development Program 2015-1 Notice of Funding Availability ("NOFA") for Westridge Villas, #15502, McKinney – was presented by Brent Stewart, TDHCA Director of Real Estate Analysis, with clarifying information from Mr. Gouris. After public comment (listed below), the Board unanimously approved staff recommendation to deny the appeal.

- Terri Anderson, Anderson Development and Construction, testified in opposition to staff recommendation
- Mike Bachman, Mason Joelson Multifamily Finance, testified in opposition to staff recommendation

8) Action Item 5(b) – Presentation, Discussion, and Possible Action on appeal of the recommended HOME loan terms in connection with the application under the Multifamily Development Program 2015-1 Notice of Funding Availability ("NOFA") for Merritt Hill Country, #15273, Dripping Springs – was presented by Mr. Stewart, with clarifying information from Mr. Gouris and Mr. Irvine. After public comment (listed below), the Board unanimously approved staff recommendation to deny the appeal.

- Cynthia Bast, Locke Lord and representing the applicant, testified in opposition to staff recommendation

9) Action Item 6(a) – Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register* – was presented by Ms. Morales with additional information provided by Beau Eccles, TDHCA General Counsel, Mr. Irvine, Ms. Sylvester, and Mr. Gouris. After public comment (listed below), the Board unanimously tabled a motion to approve staff recommendation regarding the proposed rules repeals and the publishing of draft rules until September 11, 2015, at a specially called meeting of the Board.

- Julian Reed, Texas Historical Commission, testified with comments on the proposed rules
- Lisa Stephens, Sagebrook Development, testified with comments on the proposed rules
- Tracey Fine, National Church Residences, testified with comments on the proposed rules
- Robbye Meyer, Arx Advantage, testified with comments on the proposed rules
- Sean Brady testified with comments on the proposed rules
- Tony Sisk, Churchill Residential, testified with comments on the proposed rules

10) At 12:02 p.m. the Board went into Executive Session and reconvened in open session at 1:45 p.m. No action was taken in or as a result of Executive Session.

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 1:55 p.m. The next meeting is set for Friday, September 11, 2015.

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Secretary

Approved:

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Chair

1b

BOARD ACTION REQUEST

LEGAL DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Edgewood Manor Senior Apartments (HTC 99203 / CMTS 2275)

RECOMMENDED ACTION

WHEREAS, Edgewood Manor Senior Apartments, owned by Edgewood Manor Senior Apartments, Ltd., ("Owner") has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, Owner's representatives have agreed, subject to Board approval, to enter into an Agreed Final Order stipulating that violations occurred, and assessing a $0 administrative penalty;

WHEREAS, all findings that had been referred for an administrative penalty were resolved informally upon the request of the Enforcement Committee, with the exception of three Fair Housing Disclosure Notice violations that are uncorrectable because the affected households moved out without signing the appropriate notices; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order, stipulating that violations occurred at Edgewood Manor Senior Apartments (HTC 99203 / CMTS 2275), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

The Edgewood Manor Senior Apartments, Ltd. ("Owner") is the owner of Edgewood Manor Senior Apartments ("Property"), a low income apartment complex composed of 30 units, located in Dallas. The Property is subject to a Land Use Restriction Agreement ("LURA") signed in 2002 in consideration for a housing tax credit allocation in the annual amount of $177,784 to build and operate the Property.

The following compliance violations identified during the 2013 file monitoring review were referred for an administrative penalty and the final correctable violation was resolved on September 30, 2015, after intervention by the Enforcement Committee, but before an informal conference was held.

1. Lease language violations for units 102, 106, 107, 201, 204, 207, 209, 210, 302, 305, 307, and 310.
2. Household income above limit upon initial occupancy violation for unit 301.
3. Violation for failure to provide evidence of material participation by a qualified nonprofit that holds a controlling interest in the Property.

The following compliance violations were referred for an administrative penalty and cannot be resolved because the affected tenants moved out without signing. No corrective action is available.

1. Fair Housing Disclosure Notice violations for units 103, 207, and 209.

Enforcement Committee informal conference notices were sent and final corrective action was not received until after the notice deadline. Although the property has not been referred to the Committee previously and all correctable violations have been resolved, it is not appropriate to close the administrative penalty referral with a warning letter because the Committee deadline was not met. However, corrective documentation was received before the informal conference to address all correctable violations, and Owner representatives have agreed to sign an Agreed Final Order stipulating that violations had occurred, and assessing an administrative penalty of $0 for noncompliance at Edgewood Manor Senior Apartments.

Consistent with direction from the Department's Enforcement Committee, an Agreed Final Order stipulating that a violation occurred is recommended, with an administrative penalty in the amount of $0.

ENFORCEMENT ACTION AGAINST EDGEWOOD MANOR SENIOR APARTMENTS, LTD. WITH RESPECT TO EDGEWOOD MANOR SENIOR APARTMENTS (HTC FILE # 99203 / CMTS # 2275)	§ § § § § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of November, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **EDGEWOOD MANOR SENIOR APARTMENTS, LTD.,** a Texas limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. During 1999, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $177,784 to build and operate Edgewood Manor Senior Apartments ("Property") (HTC file No. 99203 / CMTS No. 2275 / LDLD No. 511).

2. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective September 19, 2002, and filed of record at Document Number 2133112 of the Official Public Records of Real Property of Dallas County, Texas ("Records").

3. Respondent is a Texas limited partnership that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations[1]:

4. An on-site monitoring review was conducted on November 21, 2013, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a March 16, 2014 corrective action deadline was set, however, the following violations were not corrected before the deadline:

   a. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 102, 106, 107, 201, 204, 207, 209, 210, 302, 305, 307, and 310, a violation of 10 TEX. ADMIN. CODE §10.608 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process.

      Acceptable corrective documentation was submitted on August 6, 2014, 143 days past the corrective deadline.

   b. Respondent failed to provide the Fair Housing Disclosure Notice for units 103, 207, and 209, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a "Tenant Rights and Resources Guide."

      These three findings are uncorrectable because the affected households moved out without signing during the appropriate time period.

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[1] Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 301, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.

   Acceptable corrective documentation was submitted on August 4, 2015, 506 days past the corrective deadline, after an administrative penalty informal conference notice was sent.

d. Respondent failed to provide evidence of material participation by a qualified nonprofit that holds a controlling interest in the Property, a violation of 10 TEX. ADMIN. CODE §10.615 which outlines requirements for material participation, and a violation of Appendix A of the LURA which requires Operation Relief Community Development Corporation to control the property and materially participate in its operation and development, as defined by Section 469(h) of the Internal Revenue Code. Although Operation Relief Center, Inc. d/b/a Operation Relief Community Development Corporation was able to provide evidence of its material participation and represented that it controlled the development, it was unable to provide documentation to prove that it held a controlling interest in the development. Governing documentation for Edgewood Manor Senior Apartments, Ltd. was updated and acceptable corrective documentation was submitted on September 30, 2015, 563 days past the corrective deadline, after an administrative penalty informal conference notice was sent.

5. The following violations remain outstanding at the time of this order:

   a. Fair Housing Disclosure Notice violations described in FOF #4b, which are uncorrectable;

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013 by failing to execute required lease provisions or exclude prohibited lease language for units 102, 106, 107, 201, 204, 207, 209, 210, 302, 305, 307, and 310.

5. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 103, 207, and 209.

6. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §10.606 in 2013 by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 301.

7. Respondent violated 10 TEX. ADMIN. CODE §10.615 and Appendix A of the LURA in 2013, by failing to provide evidence of material participation and a controlling interest by a qualified nonprofit.

8. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.

9. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

10. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.

11. An administrative penalty of $0 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $0.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at Attachment 1, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

Approved by the Governing Board of TDHCA on ________________________, 2015.

By: ________________________________
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: ________________________________
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _________ day of _____________, 2015, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _________ day of _____________, 2015, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF ______________________§

BEFORE ME, __________________, a notary public in and for the State of ________________, on this day personally appeared ______________________, known to me or proven to me through ______________________ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is ______________________, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of __________________ for Respondent. I am the authorized representative of Respondent, owner of Edgewood Manor Senior Apartments, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

EDGEWOOD MANOR SENIOR APARTMENTS, LTD., Texas limited partnership

OPERATION RELIEF CENTER, INC. d/b/a **OPERATION RELIEF COMMUNITY DEVELOPMENT CORPORATION**, a Texas nonprofit corporation

By: ______________________________

Name: Roger McCasland

Title: President

Given under my hand and seal of office this ________ day of ______, 2015.

____
Signature of Notary Public

____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF ___________

My Commission Expires: __________

Attachment 1:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1c

BOARD ACTION REQUEST

LEGAL DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning March Street (HTC 70107 / CMTS 926)

RECOMMENDED ACTION

WHEREAS, March Street Rental (HTC 70107 / CMTS 926), owned by Madison March, Ltd ("Owner") has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on October 9, 2015, Owner's representatives met with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of $2,500, with $500 to be paid on or before December 14, 2015, and the remaining $2,000 to be forgiven if all violations are resolved as instructed in the Agreed Final Order on or before January 11, 2016;

WHEREAS, unresolved compliance findings include: affirmative marketing violation; household income above limit upon initial occupancy violations for units 4624, 4622, 4629, 4527, 4528, and 4530; Annual Eligibility Certification violation for units 4516 and 4530; Fair Housing Disclosure Notice violations for units 4528 and 4530; and Notice of Amenities and Services violations for units 4528 and 4530; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case,

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of $2,500, subject to partial forgiveness as outlined above for noncompliance at March Street Rental (HTC 70107 / CMTS 926), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Madison March, Ltd ("Owner") is the owner of March Street Rental ("Property"), a low income apartment complex comprised of 60 units, located in Dallas. The Property is subject to a Land Use Restriction Agreement ("LURA") signed in 2002 in consideration for an annual housing tax credit allocation in the amount of $75,930 to build and operate the Property.

The following compliance violations were referred for an administrative penalty and were resolved in October of 2015, after intervention by the Enforcement Committee:

1. Written tenant selection criteria violation;
2. Utility allowance violation;
3. Fair Housing Disclosure Notice violation for unit 4622; and
4. Notice of Amenities and Services violation for unit 4622.

The following compliance violations were referred for an administrative penalty and are unresolved:

1. Affirmative marketing plan violation;
2. Household income violations for units 4624, 4622, 4629, 4527, 4528, and 4530;
3. Annual Eligibility Certification violations for units 4516 and 4530;
4. Fair Housing Disclosure Notice violations for units 4528 and 4530; and
5. Notice of Amenities and Services violations for units 4528 and 4530.

Owner met with the Enforcement Committee on October 9, 2015, and agreed to sign an Agreed Final Order with the following terms:

1. A $2,500 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit $500 portion of the administrative penalty on or before December 14, 2015;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before January 11, 2016;
4. If Owner complies with all requirements and addresses all violations as required, the remaining $2,000 portion of the administrative penalty will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of $2,500 is recommended.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
MADISON MARCH, LTD, WITH	§	TEXAS DEPARTMENT OF
RESPECT TO MARCH STREET	§	HOUSING AND
(HTC FILE # 70107 / CMTS # 926)	§	COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of November, 2015, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **MADISON MARCH, LTD,** a Texas limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV'T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV'T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. During 2002, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $75,930 to build and operate March Street ("Property") (HTC file No. 70107 / CMTS No. 926 / LDLD No. 497).

2. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective 2002, and filed of record at Document Number 1921596 of the Official Public Records of Real Property of Dallas County, Texas ("Records"), then filed of record a second time at 1938671 to add Exhibit A. In accordance with Section 2 of the LURA, the

LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.

3. Respondent is a a Texas limited partnership that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations[1]:

4. An on-site monitoring review was conducted on September 11, 2014, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a May 18, 2015, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
   a. Respondent failed to maintain written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The violation was corrected on October 8, 2015, 143 days past the corrective deadline, after intervention by the Enforcement Committee.
   b. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. The violation was corrected on October 6, 2015, 141 days past the corrective deadline, after intervention by the Enforcement Committee.
   c. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to approve and distribute an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to an administrative penalty informal conference notice, but the plan was incomplete and also omitted the required marketing materials to prove that the development was carrying out marketing to groups identified as least likely to apply;
   d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 4624, 4622, 4629, 4527, 4528, and 4530, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4b of the LURA, which require screening of tenants to ensure qualification for the program;

[1] Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

e. Respondent failed to provide an Annual Eligibility Certifications for units 4516 and 4530, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.

f. Respondent failed to provide the Fair Housing Disclosure Notice for units 4622, 4528, and 4530, a violation of 10 TEX. ADMIN. CODE § 10.612 (Tenant File Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a "Tenant Rights and Resources Guide."

   Partially acceptable corrective documentation was submitted to resolve the violation for unit 4622 on October 8, 2015, 143 days past the corrective deadline, after an administrative penalty informal conference notice was sent. The finding remains unresolved for units 4528 and 4530; of those, the finding is correctable for unit 4528, but uncorrectable for unit 4530 because that affected household moved out without signing during the appropriate time period.

g. Respondent failed to provide a Notice of Amenities and Services to units 4622, 4528, and 4530, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a "Tenant Rights and Resources Guide."

   Partially acceptable corrective documentation was submitted to resolve the violation for unit 4622 on October 8, 2015, 143 days past the corrective deadline, after an administrative penalty informal conference notice was sent. The finding remains unresolved for units 4528 and 4530; of those, the finding is correctable for unit 4528, but uncorrectable for unit 4530 because that affected household moved out without signing during the appropriate time period.

5. The following violations remain outstanding at the time of this order:

   a. Affirmative marketing plan violation described in FOF #4c;

   b. Household income violations described in FOF #4d;

   c. Annual Eligibility Certification violations described in FOF #4e;

   d. Fair Housing Disclosure Notice violations described in FOF #4f;

   e. Notice of Amenities and Services violations described in FOF #4g;

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014 – OR - 10 TEX. ADMIN. CODE §2.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2014, by not maintaining written tenant selection criteria meeting TDHCA requirements.

5. Respondent violated 10 TEX. ADMIN. CODE § 10.614 in 2014 by failing to properly calculate a utility allowance.

6. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2014, by failing to provide a complete affirmative marketing plan.

7. Respondent violated 10 TEX. ADMIN. CODE §10.611 and Section 4(b) of the LURA in 2014, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 4624, 4622, 4629, 4527, 4528, and 4530.

8. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014 by failing to collect Annual Eligibility Certifications for units 4516 and 4530.

9. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 4622, 4528, and 4530.

10. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute the Notice of Amenities and Services for units 4622, 4528, and 4530.

11. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.

12. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

13. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.

14. An administrative penalty of $2,500 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $2,500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a $500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 14, 2015.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachments 1 and 2, and submit full documentation of the corrections to TDHCA on or before January 11, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at Attachment 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty in the amount of $2,000 and that remaining amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the remaining administrative penalty in the amount of $2,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review.
If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _________________________, 2015.

By: ______________________________
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: ______________________________
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF ___________ §

Before me, the undersigned notary public, on this _________ day of _____________, 2015, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this _________ day of _____________, 2015, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF ______________________§

BEFORE ME, _________________, a notary public in and for the State of _________________, on this day personally appeared ______________________, known to me or proven to me through ______________________ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is ______________________, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.

2. I hold the office of __________________ for Respondent. I am the authorized representative of Respondent, owner of March Street, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.

3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

MADISON MARCH, LTD,, a Texas limited partnership

MADISON GP, INC., a Texas corporation

By: ______________________________

Name: Robert Teeter

Title: ______________________________

Given under my hand and seal of office this _______ day of ______, 2015.

____
Signature of Notary Public

____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF __________
My Commission Expires: __________

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

   http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y

2. Refer to the following link for copies of forms that are referenced below:

   http://www.tdhca.state.tx.us/pmcomp/forms.htm

3. Technical support and training presentations are available at the following links:

   Video/Audio Training: http://www.tdhca.state.tx.us/pmcomp/presentations.htm

   Income and Rent Limits: http://www.tdhca.state.tx.us/pmcomp/irl/index.htm

   FAQ's: http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm

4. **Affirmative marketing plan** – Respondent submitted an Affirmative Marketing Plan, however it did not comply with all rule requirements at 10 TAC 10.617, did not include all of the required groups identified by the Affirmative Marketing Web Tool as least likely to apply, and did not include evidence of marketing to the identified groups.

   The affirmative marketing web tool referenced at 10 TAC 10.617 in order to determine groups that are least likely to apply is available online at: http://www.tdhca.state.tx.us/pmcomp/forms.htm. The disabled must also be selected as a group that is least likely to apply regardless of the tool results.

   Submit affirmative marketing web tool results, updated affirmative marketing plan following the instructions at 10 TAC 10.617, and evidence of outreach marketing efforts to the groups identified by the affirmative marketing web tool and incorporated into the affirmative marketing plan.

5. **Fair Housing Disclosure Notice *and* Notice of Amenities and Services** – These notices have been combined and replaced by the Tenants Rights and Resource Guide, as indicated at 10 TEX. ADMIN. CODE §10.613(k).

   Correctable findings: Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k) and submit signed Tenants Rights and Resource Guide Acknowledgment for unit 4528. If the tenant has moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.

   Uncorrectable findings: The household that triggered the finding for unit 4530 vacated the unit without completing the required form. Therefore, there is no corrective action available and the finding will remain outstanding.

6. **Annual Eligibility Certification (units 4516 and 4530)** – Submit signed Annual Eligibility Certification forms with current data on each household.

7. **Household income above limit upon initial occupancy (units 4624, 4622, 4629, 4527, 4528, and 4530) –** Follow the instructions below:

Circumstance	Required Action
If unit is occupied by a qualified household	Submit full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after the deadline is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is occupied by a nonqualified household with a non-expired lease	1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after the deadline is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is vacant	1. Unit must be made ready for occupancy and a letter certifying that it is ready for occupancy must be submitted to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after the deadline is acceptable for this circumstance provided that Requirement 1 is fulfilled.

**A full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment. It may be necessary to perform a recertification (new application, new verifications of income and assets, new tenant income certification using current circumstances) if all of the required documentation indicated above is not present in your tenant files.*

Attachment 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html. Forms discussed below are available at: http://www.tdhca.state.tx.us/pmcomp/forms.htm.

1. **Intake Application:** The Department does not have a required form to screen households, but we make this form available for that purpose. It is required that households be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with "none" or "n/a." The application must be signed and dated by all adult household members, using the date that the form is actually completed.

2. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:

   a. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;

   b. **Employment Verification Form**: Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

   c. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits;

   d. **Telephone Verifications**: these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;

   e. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

3. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:

   a. **Under $5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than $5,000, as reported on the Intake Application, the TDHCA Under $5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.

   b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.

   c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

4. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at http://www.tdhca.state.tx.us/pmcomp/irl/index.htm. Be sure to include any income derived from assets. The form must include (and be signed by) each adult household member.

5. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at http://www.tdhca.state.tx.us/pmcomp/irl/index.htm When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 Tex. Admin. Code §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 Tex. Admin. Code §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. The Texas Apartment Association has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined in the rule.

6. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights

and Resources Guide, a copy of which is available online at: http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

a) Information about Fair Housing and tenant choice; and
b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, correction will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at: http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf.

Attachment 3:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1d

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit ("HTC") Application for Glenwood Trails II (#14145).

RECOMMENDED ACTION

WHEREAS, Glenwood Trails II received an award of 9% Housing Tax Credits in 2014 to construct 114 units in Deer Park, Harris County;

WHEREAS, the Development Owner is now requesting material alterations to the Development's site plan and a decrease of total net rentable square footage by less than 3% due to budget issues;

WHEREAS, Board approval is required for any change that would materially alter a Development, as provided for in Texas Government Code §2306.6712 and 10 TAC §10.405(a) and the Owner has complied with the amendment requirements therein;

WHEREAS, the requested changes do not negatively affect the Development, impact the viability of the transaction, negatively impact scoring items in the tax credit application, or affect the amount of the tax credits awarded; and

WHEREAS, the Development Owner represents that the Development will still meet the construction requirements in 10 TAC Chapter 1, Subchapter B;

NOW, therefore, it is hereby

RESOLVED, that the requested application amendment is granted and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Glenwood Trails II received a 2014 HTC award to construct 114 multifamily units in Deer Park, Harris County. The Development Owner, Glenwood Trails II, LP (Kilday Operating LLC/Les

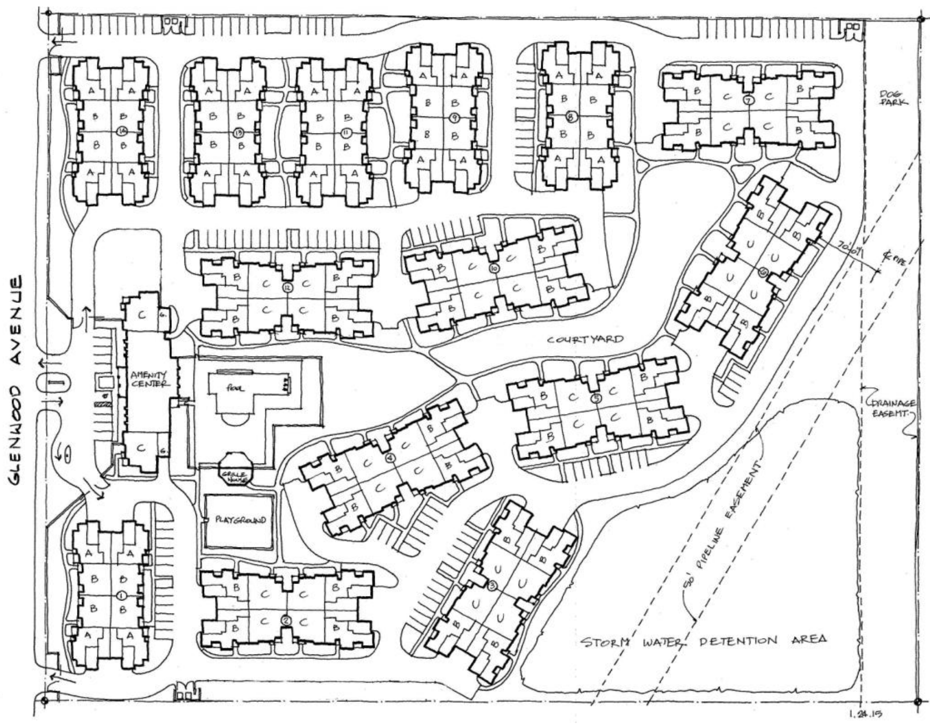
Kilday) is submitting this amendment request because they indicate that construction bid prices have increased by $3,000,000 over the budgeted amount. As a result, the owner worked with the architect and contractor to find ways to reduce costs. The revised construction costs for the Development have increased by $1.5M or 9% from the costs estimated at Application.

The Applicant is relaying that their construction contractor is attributing the extraordinary cost increase to increasing construction costs in the Houston area, a backlog of construction due to delays caused by flooding disasters, and the higher costs of building single-story construction.

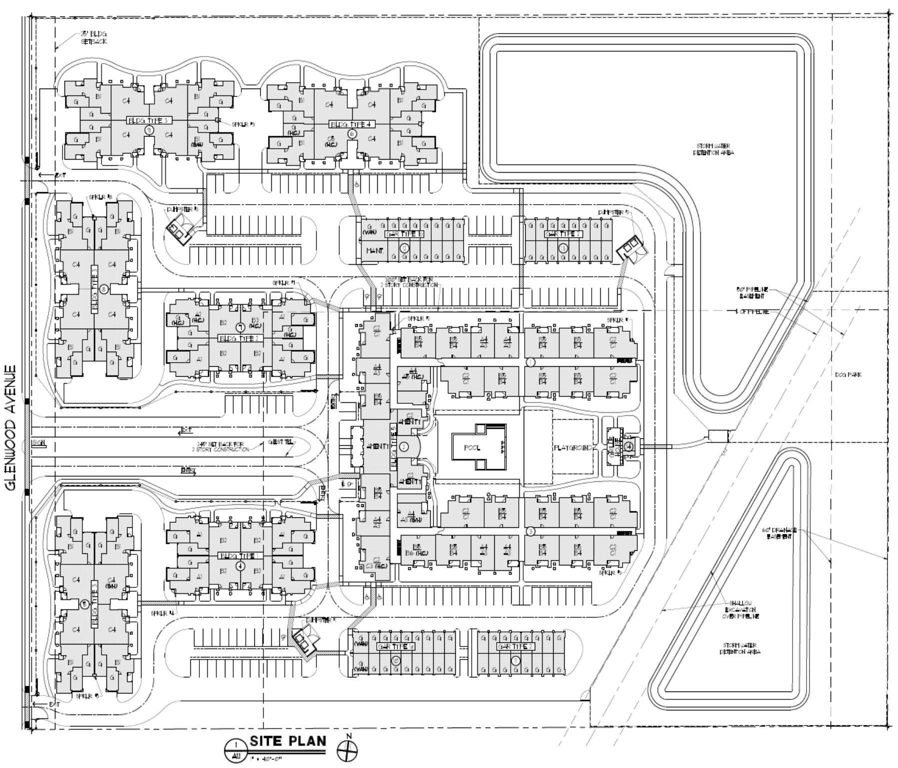
The owner, architect and contractor are now proposing changes to the development in order to reduce construction costs. Suggested changes include converting 66 of the 114 units from one-story to two-story design with detached garages, increasing the detention area to reduce the need for expensive imported fill material, creating more efficient site design to reduce utility loop lengths and concrete requirements, and decreasing net rentable square footage (by less than 3%). Specifically, the amendment requests the following:

A significant modification to the site plan has occurred as a result of converting 66 units from one-story to two-story construction. The site plan now includes 8-unit single-story cottages with attached garages and one U-shaped two-story building with detached garages for each unit. Additionally, the Applicant has had to increased the detention pond capacity to reduce (or totally eliminate) the need for up to 3 feet of expensive imported fill material throughout the site. Also, the more efficient site design reduces lengthy utility loops, converts drives and parking spaces around the outer edge of the site to internal drives and parking spaces (thus reducing expensive concrete requirements and provides more efficient ingress and egress). Underwriting report concerns of limited surface parking for some buildings is addressed with the updated site design. Staff has confirmed that amenities reflected in the original site plan are still being planned for the development in the revised site plan.

Site Plan at Application



Site Plan at Amendment



A decrease in the total net rentable square footage is also reflected in the amendment request. The decrease in square footage is less than 3% and primarily concentrated in the three-bedroom units (which were already large units). All 66 units in the new two-story building have been upgraded to include island kitchens. Major amenities (clubhouse, pool and playground) are located closer to most units.

The additional changes in development costs and financing have been re-evaluated by the Department's Real Estate Analysis Division and have been found to have no negative impact on the financial feasibility of the Development or impact the credit recommendation at this time. Staff has further reviewed the original application and scoring documentation against this amendment request and has concluded that none of the changes would have resulted in selection or threshold criteria changes that would have affected the application score.

Staff recommends approval of the amendment request.

October 7, 2015

Lucy Trevino
Senior Asset Manager
Texas Department of Housing and Community Affairs
221 East 11th
Austin, Texas 78701

Re: Amendment request for TDHCA File # 14145, Glenwood Trails II, Deer Park, Texas

Ms. Trevino,

Please accept this letter, along with a $2,500 check, as a formal request for amendment to Glenwood Trails II, TDHCA # 14145.

BACKGROUND:

Glenwood Trails II was awarded tax credits on December 23, 2014. This was the last award in Texas for 2014 and approximately 5 months later than the awards made at the July 31, 2014 TDHCA Board Meeting. Once our financing partners were in place and the plans were completed, our contractor put the plans out for bid. When the bid prices came back, we were shocked to find out that pricing was approximately $3,000,000 over budget. After discussing with the contractor, we determined the main causes for the extraordinary pricing were as follow:

- Construction costs continuing to increase sharply over the past year. All facets of construction (commercial, retail, single-family and multi-family) have been very active this past year and subcontractors have been able to set very high prices as construction demand continues to increase.

- Flooding disasters in southeast Texas (including Harris County) caused significant delays for ongoing construction projects. This backlog of construction put significant pressure on subcontractors to complete current projects. This has caused even higher pricing for any new projects, like Glenwood Trails II.

- Single-story construction has put greater pressure on pricing, and even more with units having attached garages*. Glenwood Trails (TDHCA #07309), our first phase directly across the street, is all single-story construction (no attached garages) due to local zoning restrictions (no multi-story within 300 ft. of single family tracts).. Glenwood Trails II was designed with the same single-story construction for continuity with Phase 1, although a portion of the Phase 2 site does allow for 2-story construction.

Once confronted with the extreme over-budget issue, we immediately met with the architect and contractor to discuss ways to significantly reduce construction costs. Changes include converting 66 of the 114 units from one-story to two-story design with detached garages, increasing detention area to

713.914.9400 FAX 713.914.9439 1717 ST. JAMES PLACE SUITE 150 HOUSTON, TEXAS 77056

reduce the need for expensive imported fill material, more efficient site design to reduce utility loop lengths and concrete requirements, and decreasing net rentable square footage (by less than 3%).

* Per our contractor, subs have recently started pricing attached garages as full air-conditioned space just like the unit itself. For instance, our A1 unit has 760 NRSF. The garage has approximately 280 sf. The subs are pricing that unit as if it were 1,040 NRSF. So, converting 66 attached garages to detached garages reduces the cost per garage by more than 50%.

Our amendment request includes the following:

SITE PLAN:

Conversion of 66 units from one-story to two-story construction, resulting in six 8-unit single-story cottages with attached garages and one U-shaped two-story building with detached garages for each unit. Increased detention pond capacity to reduce (or totally eliminate) the need for up to 3 feet of expensive imported fill material throughout the site. Also, the more efficient site design reduces lengthy utility loops, converts drives and parking spaces around the outer edge of the site to internal drives and parking spaces (thus, reducing expensive concrete requirements and provides much more efficient ingress and egress). Underwriting report concerns of limited surface parking for some buildings is addressed with the updated site design. One surprisingly nice consequence of the site plan change to have a 2-story building that includes the office/clubhouse, is more green area, enhancing the feeling of space. The boulevard-type entry drive from Glenwood Ave. to the office/clubhouse is much more attractive overall.

UNITS:

Decrease of total net rentable square footage (by less than 3%). Reduction in square footage mainly in three-bedroom units (which were already large units). *All 66 units in the new two-story building have been upgraded to include **island kitchens***. Major amenities (clubhouse, pool and playground) are located closer to most units.

I have included the architecture changes (site and unit plans) as well as the application changes (rent schedule, operating expenses, proforma, development cost schedule and sources and uses).

If you have any questions or need more information, please email or give me a call.

Sincerely,

Les Kilday
Member, General Partner

Real Estate Analysis Division
October 27, 2015

Addendum to Underwriting Report

TDHCA Application #: 14145 Program(s): 9% HTC

Glenwood Trails II

Address/Location: 4300 block of Glenwood Ave

City: Deer Park County: Harris Zip: 77536

Analysis Purpose: Amendment/Pre-Construction

	APPLICATION HISTORY
Report Date	PURPOSE
10/27/15	**Amendment - revised site plan and building configuration**
03/10/15	Initial Underwriting

ALLOCATION

	Previous Allocation				RECOMMENDATION				
TDHCA Program	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (Annual)	$1,277,458				$1,277,458				

CONDITIONS STATUS

1 Receipt and acceptance by 10% Test:
- Firm Commitment for $110K HCHFC funds clearly stating all terms and conditions.

Status: Resolution from Harris County HFC approves a "construction loan with an interest rate not to exceed three percent per annum and a term of at least five (5) years". Underwriter has assumed the term will be 5 years and therefore the loan is not included as a permanent source of financing. If the actual term is longer than 5 years, the loan could be treated as a permanent source, which would impact the debt coverage analysis. The senior debt would have to be reduced to maintain feasibility.

2 Receipt and acceptance by Cost Certification:
- Documentation clearing environmental issues contained in the ESA report, specifically:
  - i: As-built survey verifying that no part of the development is constructed in the flood plain; or, architect's certification that the development was constructed according to QAP requirements with regard to the flood plain.

3 Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

AMENDMENT

During the bidding process for the development, Applicant's bid prices were $3M over budget. As a result of the high prices, the Applicant worked with the Architect and Contractor to find ways to reduce construction costs. The changes require two amendments to the application.

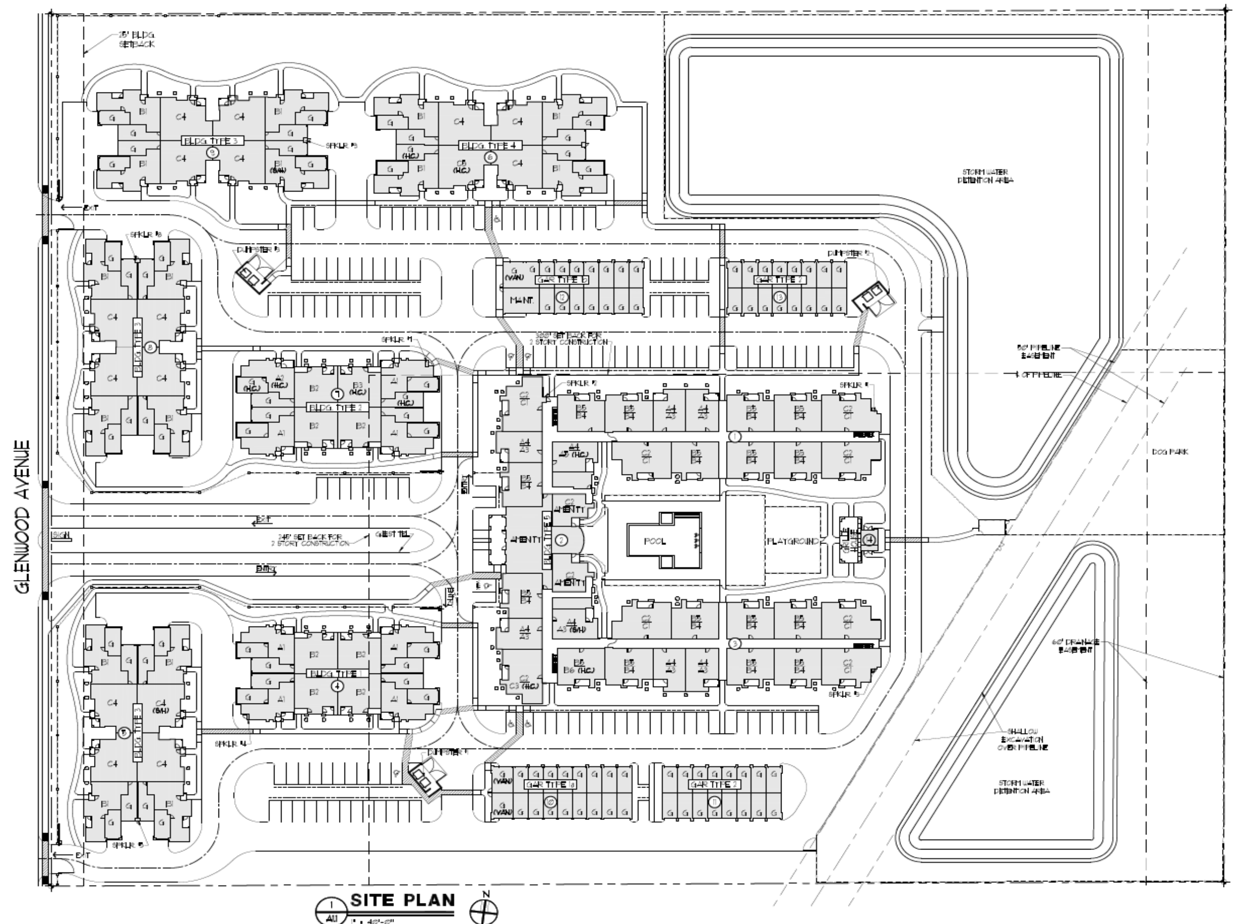
The first is to convert 66 units from one-story to two-story construction, reducing the number of residential buildings from 15 buildings to 7, resulting in eight 6-unit single story cottages with attached garages and one U-shaped two-story building. The site plan has been revised to accommodate the changes.

The second is to decrease the total net rentable square footage by 2.5% due to revised unit plans.

Applicant's total development cost has increased $1.5M. Higher budget is paid for with $700K additional debt, $510K additional equity (based on increased credit price), and $360K more deferred developer fee.

To remain eligible for 2014 HTC allocation the development must place in service by the end of 2016. At the time of this amendment the contractor (Blazer Building, Inc.) has the project out for construction bids. Applicant provided a timeline showing the project can be completed and placed in service within 11 months from start of construction.

REVISED SITE PLAN



Disclaimer: This map is not a survey. Boundaries, distances and scale are approximate only.

ANALYSIS

Operating Pro Forma

The original underwriting was based on Applicant's pro forma, including proposed market rents only $27-$46 above the 60% HTC rents, well below the rents reported by the Market Analyst. The Underwriter assumed higher market rents, but the overall variance was within 5% and the analysis was based on the Applicant's pro forma.

In the current revised submission, the Applicant's proposed market rents have increased to $107-$169 market premiums above the 60% rents. The Underwriter's assumed market rents are unchanged.

Underwritten NOI increased from $359K to $376K. But the permanent debt increased by $700K and the interest rate increased from 5.5% to 5.66%. As a result, debt coverage decreased from 1.23 to the minimum 1.15.

Since the NOI variance is 7.6%, the current analysis is based on the Underwriter's pro forma, reflecting $63-$87 market premium (8%) above 60% HTC rent. Lower market rents would require a reduction in the debt amount to maintain minimum debt coverage. Average 6% market premium is required for feasibility.

Applicant's rent schedule indicates they expect to achieve 14%-16% market premiums ($107-$169 above 60%). Updated market analysis for the construction lender indicates a 30% market premium for one-bedroom units, 137% market premium for two-bedroom units, and 35% market premium for three-bedroom units.

Development Cost

Applicant estimate for sitework remains unchanged at $1.375M ($12K per unit) despite significant changes to the site plan. Third party contractor's estimate for building cost for the revised building plans is $812K higher than the original application, and 7.6% higher than the Underwriter's revised estimate.

At original underwriting, Applicant's total costs was 1.0% above Underwriter's estimate; current proposed is 4.4% higher. Applicant's Development Cost Schedule will be used to determine need for financing.

Sources of Funds

In addition to the $700 increased debt, the credit price increased from $1.00 to $1.04, providing $510K additional equity.

$792K in deferred fees will be required for this deal, payable within 13 years of operation.

Conclusion

The development continues to be financially feasible with the requested changes to the site plan, decreasing total net rentable square footage, and capital restructuring. Cost increases were substantiated by third party contractor. Underwriter recommends approval of the amendment request and no change is recommended to the previously awarded tax credit allocation of $1,277,458 at this time. The financing structure of the development will be re-evaluated at Cost Certification and any final adjustments to the credit allocation will be made at that time.

Underwriter:	*Duc Nguyen*
Manager of Real Estate Analysis:	*Thomas Cavanagh*
Director of Real Estate Analysis:	*Brent Stewart*

UNIT MIX/RENT SCHEDULE

Glenwood Trails II, Deer Park, 9% HTC #14145

LOCATION DATA

CITY:	Deer Park
COUNTY:	Harris
PROGRAM REGION:	6
PIS Date:	On or After 2/1/2014
IREM REGION:	Houston

UNIT DISTRIBUTION

Beds	Units	% Total	Income	Units	% Total
Eff	-	0.0%	30%	22	19.3%
1	24	21.1%	40%	-	0.0%
2	56	49.1%	50%	41	36.0%
3	34	29.8%	60%	39	34.2%
4	-	0.0%	MR	12	10.5%
TOTAL	**114**	**100.0%**	**TOTAL**	**114**	**100.0%**

Applicable Programs

9% Housing Tax Credits

Pro Forma ASSUMPTIONS

Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	89.47%
APP % Acquisition	3.42%
APP % Construction	8.04%
Average Unit Size	1,010 sf

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Units	Beds	Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten		Mrkt Analyst
TC 30%	$390	5	1	1	777	$390	$37	$353	$0	$0.45	$353	**$1,765**	**$1,765**	$353	$0.45	$0	$965	$1.24	$965
TC 50%	$650	7	1	1	777	$650	$37	$613	$0	$0.79	$613	**$4,291**	**$4,291**	$613	$0.79	$0	$965	$1.24	$965
TC 50%	$650	2	1	1	777	$650	$37	$613	$0	$0.79	$613	**$1,226**	**$1,226**	$613	$0.79	$0	$965	$1.24	$965
TC 60%	$780	4	1	1	760	$780	$37	$743	$0	$0.98	$743	**$2,972**	**$2,972**	$743	$0.98	$0	$965	$1.27	$965
TC 60%	$780	1	1	1	771	$780	$37	$743	$0	$0.96	$743	**$743**	**$743**	$743	$0.96	$0	$965	$1.25	$965
TC 60%	$780	2	1	1	777	$780	$37	$743	$0	$0.96	$743	**$1,486**	**$1,486**	$743	$0.96	$0	$965	$1.24	$965
MR		3	1	1	760	$0	$37		NA	$1.12	$850	**$2,550**	**$2,418**	$806	$1.06	NA	$806	$1.06	$965
TC 30%	$468	11	2	2	1,007	$468	$46	$422	$0	$0.42	$422	**$4,642**	**$4,642**	$422	$0.42	$0	$1,045	$1.04	$1,045
TC 50%	$780	17	2	2	1,007	$780	$46	$734	$0	$0.73	$734	**$12,478**	**$12,478**	$734	$0.73	$0	$1,045	$1.04	$1,045
TC 50%	$780	4	2	2	1,007	$780	$46	$734	$0	$0.73	$734	**$2,936**	**$2,936**	$734	$0.73	$0	$1,045	$1.04	$1,045
TC 60%	$936	16	2	2	971	$936	$46	$890	$0	$0.92	$890	**$14,240**	**$14,240**	$890	$0.92	$0	$1,045	$1.08	$1,045
TC 60%	$936	2	2	2	1,001	$936	$46	$890	$0	$0.89	$890	**$1,780**	**$1,780**	$890	$0.89	$0	$1,045	$1.04	$1,045
MR		6	2	2	1,001	$0	$46		NA	$1.00	$1,000	**$6,000**	**$5,790**	$965	$0.96	NA	$965	$0.96	$1,045
TC 30%	$540	6	3	2	1,170	$540	$50	$490	$0	$0.42	$490	**$2,940**	**$2,940**	$490	$0.42	$0	$1,397	$1.19	$1,397
TC 50%	$901	11	3	2	1,170	$901	$50	$851	$0	$0.73	$851	**$9,361**	**$9,361**	$851	$0.73	$0	$1,397	$1.19	1397
TC 60%	$1,081	1	3	2	1,170	$1,081	$50	$1,031	$0	$0.88	$1,031	**$1,031**	**$1,031**	$1,031	$0.88	$0	$1,397	$1.19	1397
TC 60%	$1,081	13	3	2	1,237	$1,081	$50	$1,031	$0	$0.83	$1,031	**$13,403**	**$13,403**	$1,031	$0.83	$0	$1,397	$1.13	1397
MR		3	3	2	1,237	$0	$50		NA	$0.97	$1,200	**$3,600**	**$3,354**	$1,118	$0.90	NA	$1,118	$0.90	1397
TOTALS/AVERAGES:		**114**			**115,143**				**$0**	**$0.76**	**$767**	**$87,444**	**$86,856**	**$762**	**$0.75**	**$0**	**$1,117**	**$1.11**	**$1,133**

ANNUAL POTENTIAL GROSS RENT:	**$1,049,328**	**$1,042,272**

STABILIZED PRO FORMA

Glenwood Trails II, Deer Park, 9% HTC #14145

	STABILIZED FIRST YEAR PRO FORMA														
	COMPARABLES			APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database		Glenwood Phase I	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	$
POTENTIAL GROSS RENT					$0.76	$767	$1,049,328	$994,848	$1,005,227	$1,042,272	$762	$0.75		0.7%	$7,056
App fees, laundry, late fees						$10.00	$13,680	13,680							
Total Secondary Income						$10.00			13,680	$13,680	$10.00			0.0%	$0
POTENTIAL GROSS INCOME			$ -				$1,063,008	$1,008,528	$1,018,907	$1,055,952				0.7%	$7,056
Vacancy & Collection Loss						7.5% PGI	(79,726)	(75,640)	(76,418)	(79,196)	7.5% PGI			0.7%	(529)
Non-Rental Units/Concessions							-	0						0.0%	-
EFFECTIVE GROSS INCOME			$ -		$8.54	$8,625	$983,282	$932,888	$942,489	$976,756	$8,568	$8.48		0.7%	$6,527
General & Administrative	$47,611	$418/Unit	36,998	4.02%	$0.34	$347	$39,550	$39,550	$36,998	$36,998	$325	$0.32	3.79%	6.9%	2,552
Management	$42,881	4.7% EGI	52,536	5.00%	$0.43	$431	$49,164	$46,644	$47,124	$48,838	$428	$0.42	5.00%	0.7%	326
Payroll & Payroll Tax	$127,732	$1,120/Unit	151,815	13.86%	$1.18	$1,195	$136,250	$125,350	$125,350	$136,250	$1,195	$1.18	13.95%	0.0%	-
Repairs & Maintenance	$67,086	$588/Unit	74,522	5.87%	$0.50	$507	$57,750	$58,750	$62,700	$62,700	$550	$0.54	6.42%	-7.9%	(4,950)
Electric/Gas	$29,294	$257/Unit	25,414	3.84%	$0.33	$331	$37,750	$38,750	$35,414	$35,414	$311	$0.31	3.63%	6.6%	2,336
Water, Sewer, & Trash	$68,634	$602/Unit	58,054	5.54%	$0.47	$478	$54,500	$55,500	$58,054	$58,054	$509	$0.50	5.94%	-6.1%	(3,554)
Property Insurance	$50,423	$0.44 /sf	94,031	7.37%	$0.63	$636	$72,500	$72,500	$72,500	$72,500	$636	$0.63	7.42%	0.0%	-
Property Tax 3.0983	$81,563	$715/Unit	108,975	8.98%	$0.77	$775	$88,311	$88,311	$107,740	$107,727	$945	$0.94	11.03%	-18.0%	(19,416)
Reserve for Replacements	$39,397	$346/Unit	28,500	2.90%	$0.25	$250	$28,500	$28,500	$28,500	$28,500	$250	$0.25	2.92%	0.0%	-
Cable TV				0.00%	$0.00	$0	$0	$0	$0	$0	$0	$0.00	0.00%	0.0%	-
Supportive services			17,000	0.41%	$0.03	$35	$4,000	$10,000	$10,000	$4,000	$35	$0.03	0.41%	0.0%	-
TDHCA Compliance fees			$4,080	0.46%	$0.04	$40	$4,560	$4,560	$4,080	$4,080	$36	$0.04	0.42%	11.8%	480
Security			-	0.56%	$0.05	$48	$5,500	$5,500	$5,500	$5,500	$48	$0.05	0.56%	0.0%	-
TOTAL EXPENSES			**$ 657,424**	**58.82%**	**$5.02**	**$5,073**	**$578,335**	**$573,916**	**$593,959**	**$ 600,560**	**$5,268**	**$5.22**	**61.49%**	**-3.7%**	**$ (22,225)**
NET OPERATING INCOME ("NOI")				**41.18%**	**$3.52**	**$3,552**	**$404,947**	**$358,973**	**$348,529**	**$376,196**	**$3,300**	**$3.27**	**38.51%**	**7.6%**	**$ 28,751**

CONTROLLABLE EXPENSES						$2,858/Unit					$2,890/Unit				

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Glenwood Trails II, Deer Park, 9% HTC #14145

DEBT / GRANT SOURCES

		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE							Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
		Cumulative DCR														Cumulative	
DEBT (Must Pay)	**MIP**	UW	App	Pmt	Rate	Amort	Term	Principal	Applicant	TDHCA	Principal	Term	Amort	Rate	Pmt	DCR	LTC
LISC		1.15	1.23	328,525.45	5.66%	35	18	$5,000,000	$4,300,000	$4,300,000	$5,000,000	18	35	5.66%	328,525	1.15	26.2%
CASH FLOW DEBT / GRANTS																	
				$328,525	TOTAL DEBT / GRANT SOURCES			$5,000,000			$5,000,000	TOTAL DEBT SERVICE			$328,525		26.2%
NET CASH FLOW		$47,670	$76,422										NET OPERATING INCOME	$376,196	$47,670	NET CASH FLOW	

EQUITY SOURCES

	APPLICANT'S PROPOSED EQUITY STRUCTURE					Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Applicant	TDHCA	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	
NEF	LIHTC Equity	69.6%	$1,277,458	1.04	$13,284,235	$12,773,303	$12,773,303	$13,284,235	$1.04	$1,277,458	69.6%	$116,528	
Kilday Partners LLC	Deferred Developer Fees	4.2%	(38% Deferred)		$792,696	$432,941	$432,941	$792,695	(38% Deferred)		4.2%	Total Developer Fee:	$2,087,269
Additional (Excess) Funds Req'd		0.0%			($1)	$0	$0	$0			0.0%		
TOTAL EQUITY SOURCES		73.8%			$14,076,930	$13,206,244	$13,206,244	$14,076,930			73.8%	15-Year Cash Flow:	$857,553
TOTAL CAPITALIZATION					$19,076,930	$17,506,244	$17,506,244	$19,076,930				15-Yr Cash Flow after Deferred Fee:	$64,858

DEVELOPMENT COST / ITEMIZED BASIS

	APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS					COST VARIANCE	
	Eligible Basis										Eligible Basis			
	Acquisition	New Const. Rehab	Total Costs			Applicant	TDHCA	Total Costs			New Const. Rehab	Acquisition	%	$
Land Acquisition				$16,335 / Unit	$1,862,190	$1,862,190	$1,862,190	$1,862,190	$16,335 / Unit				0.0%	$0
Building Acquisition	$0			$ / Unit	$0	$0	$0	$0	$ / Unit			$0	0.0%	$0
Off-Sites				$ / Unit	$0	$0	$0	$0	$ / Unit				0.0%	$0
Site Work		$1,375,044		$12,062 / Unit	$1,375,044	$1,375,044	$1,375,044	$1,375,044	$12,062 / Unit		$1,375,044		0.0%	$0
Site Amenities		$442,328		$3,880 / Unit	$442,328	$442,328	$442,328	$442,328	$3,880 / Unit		$442,328		0.0%	$0
Building Costs		$9,076,867	$78.83 /sf	$79,622/Unit	$9,076,867	$8,265,014	$8,093,036	$8,438,214	$74,019/Unit	$73.28 /sf	$8,438,214		7.6%	$638,653
Contingency		$408,534	3.75%	5.00%	$544,712	$504,119	$504,119	$544,712	5.31%	3.98%	$408,534		0.0%	$0
Contractor's Fees		$1,525,193	13.49%	13.33%	$1,525,193	$1,411,534	$1,411,534	$1,512,042	14.00%	14.00%	$1,492,977		0.9%	$13,151
Soft Costs	0	$723,910		$7,381 / Unit	$841,410	$730,104	$730,104	$841,410	$7,381 / Unit		$723,910	$0	0.0%	$0
Developer's Fees	$0	$2,087,269	15.00%	14.85%	$2,087,269	$1,904,455	$1,904,455	$2,007,065	15.00%	15.00%	$1,986,639	$0	4.0%	$80,204
Financing	0	$363,250		$6,404 / Unit	$730,018	$632,956	$632,956	$730,018	$6,404 / Unit		$363,250	$0	0.0%	$0
Reserves				$4,825 / Unit	$550,000	$378,500	$378,500	$470,951	$4,131 / Unit				16.8%	$79,049
UNADJUSTED BASIS / COST	**$0**	**$16,002,395**		$167,341 / Unit	**$19,076,930**	**$17,506,244**	**$17,334,266**	**$18,265,873**	$160,227 / Unit		**$15,230,896**	**$0**	**4.4%**	**$811,057**
Acquisition Cost	$0				$0									
Contingency		$0												
Contractor's Fee		$0												
Interim Interest		$0												
Developer's Fee	$0	($0)			$0									
Reserves					$0									
ADJUSTED BASIS / COST	**$0**	**$16,002,395**		$167,341/unit	**$19,076,930**			**$18,265,873**	$160,227/unit		**$15,230,896**	**$0**	**4.4%**	**$811,057**

TOTAL UNDERWRITTEN COSTS (Applicant's Uses are within 5% of TDHCA Estimate):	$19,076,930

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Glenwood Trails II, Deer Park, 9% HTC #14145

CREDIT CALCULATION ON QUALIFIED BASIS

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	$0	$16,002,395	$0	$15,230,896
Deduction of Federal Grants	$0	$0	$0	$0
TOTAL ELIGIBLE BASIS	$0	$16,002,395	$0	$15,230,896
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	$0	$20,803,113	$0	$19,800,164
Applicable Fraction	89.47%	89.47%	89.47%	89.47%
TOTAL QUALIFIED BASIS	$0	$18,613,312	$0	$17,715,936
Applicable Percentage	3.42%	8.04%	3.42%	8.04%
ANNUAL CREDIT ON BASIS	$0	$1,496,510	$0	$1,424,361
CREDITS ON QUALIFIED BASIS	$1,496,510		$1,424,361	

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS

Method	Annual Credits	Proceeds
Eligible Basis	$1,496,510	$15,562,151
Gap	$1,353,686	$14,076,930
Applicant Request	$1,277,458	$13,284,235

FINAL ANNUAL LIHTC ALLOCATION

Method	Applicant Request	Variance to Request
Credits	$1,277,458	$0
Total Equity Proceeds		
	$13,284,235	$0

BUILDING COST ESTIMATE

CATEGORY		FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Wrap Style (3 or 4-story)		115,143 SF	$63.12	7,267,657
Adjustments					
Exterior Wall Finish		3.60%		2.27	$261,636
		0.00%		0.00	0
9 ft. ceilings		3.45%		2.18	250,734
Roofing				1.19	136,800
Subfloor				(1.54)	(177,078)
Floor Cover				3.47	399,892
Breezeways		$25.93	12,969	2.92	336,319
Balconies		$25.00	11,073	2.40	276,849
Plumbing Fixtures		$970	270	2.27	261,900
Rough-ins		$475	228	0.94	108,300
Built-In Appliances		$1,790	114	1.77	204,060
Exterior Stairs		$2,425	4	0.08	9,700
Heating/Cooling				2.11	242,952
Enclosed Corridors		$46.91	0	0.00	0
Carports		$11.30	0	0.00	0
Garages		$23.95	33,106	6.89	792,889
Comm &/or Aux Bldgs		$88.16	4,744	3.63	418,233
Elevators			0	0.00	0
Other:	Cabana	$31.22	1015	0.28	31,688
Fire Sprinklers		$2.30	132,856	2.65	305,569
SUBTOTAL				**96.65**	**11,128,098**
Current Cost Multiplier		1.00		0.00	0
Local Multiplier		0.89		(10.63)	(1,224,091)
TOTAL BUILDING COSTS				**86.01**	**$9,904,007**
Plans, specs, survey, bldg permits		3.30%		(2.84)	($326,832)
Contractor's OH & Profit		11.50%		(9.89)	(1,138,961)
NET BUILDING COSTS			$74,019/unit	$73.28/sf	$8,438,214

30-Year Long-Term Pro Forma

Glenwood Trails II, Deer Park, 9% HTC #14145

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30
EFFECTIVE GROSS INCOME	2.00%	$976,756	$996,291	$1,016,217	$1,036,541	$1,057,272	$1,167,313	$1,288,808	$1,422,948	$1,571,050	$1,734,566
TOTAL EXPENSES	3.00%	$600,560	$618,088	$636,133	$654,709	$673,832	$778,238	$898,970	$1,038,596	$1,200,090	$1,386,898
NET OPERATING INCOME ("NOI")		**$376,196**	**$378,202**	**$380,084**	**$381,832**	**$383,440**	**$389,075**	**$389,838**	**$384,353**	**$370,960**	**$347,668**
MUST -PAY DEBT SERVICE											
TOTAL DEBT SERVICE		$328,525	$328,525	$328,525	$328,525	$328,525	$328,525	$328,525	$328,525	$328,525	$328,525
ANNUAL CASH FLOW		$47,670	$49,677	$51,558	$53,307	$54,914	$60,550	$61,313	$55,827	$42,434	$19,143
CUMULATIVE NET CASH FLOW		**$47,670**	**$97,347**	**$148,905**	**$202,212**	**$257,126**	**$550,309**	**$857,553**	**$1,150,470**	**$1,392,962**	**$1,539,665**
DEBT COVERAGE RATIO		1.15	1.15	1.16	1.16	1.17	1.18	1.19	1.17	1.13	1.06
EXPENSE/INCOME RATIO		61.5%	62.0%	62.6%	63.2%	63.7%	66.7%	69.8%	73.0%	76.4%	80.0%
Deferred Developer Fee Balance		$745,025	$695,348	$643,790	$590,483	$535,569	$242,386	$0	$0	$0	$0
Residual Cash Flow		$0	$0	$0	$0	$0	$0	$61,313	$55,827	$42,434	$19,143

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BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Windy Ridge (HTC # 13071).

RECOMMENDED ACTION

WHEREAS, TX RR620 Apartments, Ltd. ("Development Owner") was allocated $1,080,918 in 9% Housing Tax Credits in 2013 to construct Windy Ridge (the "Development"), a development consisting of 120 new multifamily units in Austin;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement and Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49, allows for and the Development Owner is requesting an extension to the placed-in-service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President during the 2-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued and the notice was amended on Friday, June 5, 2015 and on Tuesday, June 9, 2015, to include Travis County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms and flooding between January and July of 2015 impacted construction crews on the Development and delayed construction progress for a total weather-related delay of 93 days (71 "rain" days and 22 "mud" days), which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a six month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units the requested changes do not negatively affect the Development or impact the long term viability of the transaction and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a three month extension with the further authorization for the Executive Director to grant an additional three month extension of the placed in service deadline is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Windy Ridge was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 120 unit, general population, new construction property located in Austin. The Owner, TXRR620 Apartments, Ltd. (Adrian Iglesias and Rick Deyoe), and its General Partner, TX RR620 Apartments I, LLC, are owned and managed by Generation Housing Development, LLC (a 51% HUB Member) and Rick Deyoe, a 49% Individual Member.

The Owner, on September 23, 2015, submitted a letter to the Department requesting a six month extension to the date the Owner is required to place each building in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Owner is seeking the relief under IRS Revenue Procedure 2007-54 (superseded and modified by IRS Revenue Procedure 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

According to the Owner, 93 total days of weather-related delay occurred between January 1, 2015, and July 5, 2015, (71 of which were related to rain and 22 of which were related to mud). The Owner's request states that the excessive moisture (an overall 39.14 inches of rainfall compared to a typical average of 18.23 inches) on the construction site delayed the Owner's ability to complete site work, install utilities, and carry out initial concrete operations. The Owner has discussed that the development team is working diligently to make up any lost time and place buildings in service before December 31, 2015, but with the impact of the noted delays, the Owner wishes to ensure that it has sufficient time to complete the housing. As an alternative to an approval of this extension request, the Owner has requested to be permitted to return the credits and receive a re-allocation of credits in the current year pursuant to the Force Majeure provisions in 10 TAC §11.6(5) of the 2015 Qualified Allocation Plan. The Owner has stated the belief that the Development meets all of the requirements of 10 TAC §11.6(5).

According to the Development's latest Construction Status Report, dated October 9, 2015, the Development is currently 54.01% complete. Delays were highlighted as a matter warranting attention by Capital Consultants, the third party construction report provider, and the report states that at the current rate of construction, Building 7 will not be completed by December 17, 2015, as indicated on the most recent schedule and completion by December 31, 2015, is doubtful. The report also indicates that the contractor has communicated that delays have been caused by weather, a redesign of footings due to the presence of rock, and the inability of the owner to obtain an off-site utilities permit. There is no opinion related to the actual estimated completion date, though the third party report provider did state that the dry-walling phase is currently already 4 weeks behind schedule.

The Owner's request has referred to the FEMA Notices of Major Disaster Declaration released on May 29, 2015, as well as the amended notices released on June 5, 2015, and June 9, 2015, that confirm the

President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015 – June 22, 2015. The amended notices released on June 5, 2015, and June 9, 2015, included Travis County as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Ruling for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The Department's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610, due to the IRS on February 28th.

The Owner has indicated that weather related days in May caused 93 days of delay and the Owner has indicated that they are making all efforts to still meet the current deadline. Therefore, staff is recommending a three month extension with an additional three months to address any further delays as determined to be necessary by the Executive Director.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC § 10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request as presented herein.

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Austin, TX 78701
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rmorrow@lockelord.com

September 23, 2015

Mr. Tom Gouris
Deputy Executive Director for Housing Programs
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Windy Ridge Apartments in Travis County, Texas (the "**Development**")
TDHCA No. 13071

Dear Mr. Gouris:

Our firm represents TX RR620 Apartments, Ltd. ("**Owner**"), which received an allocation of low-income housing tax credits ("**Tax Credits**") from the Texas Department of Housing and Community Affairs ("**TDHCA**") for the construction of the Development, and this letter is sent on Owner's behalf. Pursuant to Section 42(h)(1)(E)(i) of the Internal Revenue Code, Owner is required to place the Development in service by December 31, 2015.

The Development is located in Travis County, Texas. On May 29, 2015 President Obama declared a major disaster for three counties in the State of Texas (FEMA-4223-DR) for "severe storms, tornadoes, straight-line winds, and flooding." On June 5, 2015, the declaration was amended to add Travis County as an affected area. Between January 1, 2015, and July 5, 2015, construction of the Development was delayed due to 71 "rain" days and 22 "mud" days, for a total weather-related delay of 93 days. During that time the area received 39.14 inches of rain, compared to the typical average of 18.23 inches. See Exhibit A attached hereto for the daily rainfall breakdown. The excessive moisture delayed Owner's ability to, among other things, complete site work, install utilities, and carryout initial concrete operations.

Fortunately, once the rains stopped, construction moved along in a timely manner. Given the current pace, Owner believes that construction can be completed by the end of the year; however, the

best result for the Development is to ensure that Owner has sufficient time to complete high-quality housing for our tenants.

Because of the challenges caused by the rain, Owner submits this request for a six-month extension of the deadline to place the Development in service to July 31, 2016. This request is submitted, and may be granted by TDHCA, pursuant to Rev. Proc. 2007-54. Section 5.03 of that Revenue Procedure states:

> If an Owner has a carryover allocation for a building located in a major disaster area and the area is declared a major disaster area during the 2-year period described in §42(h)(1)(E)(i), the [Internal Revenue] Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the 2-year period.

In the alternative, we request that Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2015 Qualified Allocation Plan (the "**QAP**"). We believe Owner and the Development meet all of the requirements of Section 11.6(5), in that:

1. The delays in construction were a direct result of significant weather events referenced above, as well as shortages in subcontractor manpower, which the contractor estimates added sixty (60) days to the construction schedule. There was also an extremely protracted permitting process with the City of Austin which resulted in further delays.

2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.

3. Evidence of the excessive rainfall is attached as Exhibit A.

4. Owner and the contractor are experienced developers of these types of properties, and each took any steps available to them to mitigate the delays; however, the weather and shortages were not within their control.

5. Owner substantially fulfilled all of its obligations that were not impeded by the weather events; the Development was properly insured; and TDHCA was notified of the weather events.

6. The weather events have prevented Owner from meeting the placement in service requirements of the original allocation.

7. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.

8. The Development continues to be financially viable.

Please feel free to contact me with any questions. We sincerely appreciate your assistance with this matter.

Respectfully submitted,

Richard D. Morrow

cc: Rick J. Deyoe
Adrian Iglesias

Exhibit A

(attached)

Weather History for KATT - January, 2015

January Precip Stats: Actual Month Total: 5.02 in | Average Month Total: 2.22 in

Precipitation accumulation is shown as one of these two metrics -

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				Actual: 40° | 34° 0.63 in Average: 61° | 41° 0.08 in	Actual: 43° | 38° 0.20 in Average: 61° | 41° 0.08 in	Actual: 62° | 39° 0.76 in Average: 61° | 41° 0.08 in
Actual: 51° | 35° 0.00 in Average: 61° | 41° 0.08 in	Actual: 52° | 29° 0.00 in Average: 61° | 41° 0.07 in	Actual: 71° | 36° 0.00 in Average: 61° | 41° 0.08 in	Actual: 51° | 30° 0.00 in Average: 61° | 41° 0.07 in	Actual: 36° | 23° T in Average: 61° | 41° 0.07 in	Actual: 38° | 34° 0.02 in Average: 61° | 41° 0.06 in	Actual: 36° | 32° 0.30 in Average: 61° | 41° 0.07 in
Actual: 49° | 34° 0.17 in Average: 61° | 41° 0.07 in	Actual: 46° | 40° 0.00 in Average: 61° | 41° 0.06 in	Actual: 42° | 35° 0.00 in Average: 61° | 41° 0.07 in	Actual: 40° | 38° 0.00 in Average: 61° | 41° 0.07 in	Actual: 59° | 38° 0.00 in Average: 61° | 41° 0.07 in	Actual: 64° | 38° 0.00 in Average: 61° | 41° 0.08 in	Actual: 69° | 39° 0.00 in Average: 61° | 41° 0.06 in
Actual: 72° | 46° 0.00 in Average: 62° | 42° 0.08 in	Actual: 75° | 37° 0.00 in Average: 62° | 42° 0.07 in	Actual: 80° | 41° 0.00 in Average: 62° | 42° 0.07 in	Actual: 56° | 50° 0.16 in Average: 62° | 42° 0.08 in	Actual: 52° | 41° 2.07 in Average: 62° | 42° 0.07 in	Actual: 51° | 38° 0.40 in Average: 62° | 42° 0.08 in	Actual: 63° | 36° 0.00 in Average: 62° | 42° 0.07 in
Actual: 73° | 40° 0.00 in Average: 62° | 42° 0.07 in	Actual: 74° | 46° 0.00 in Average: 62° | 42° 0.07 in	Actual: 83° | 51° 0.00 in Average: 62° | 42° 0.07 in	Actual: 81° | 42° 0.00 in Average: 62° | 42° 0.07 in	Actual: 79° | 52° T in Average: 63° | 42° 0.07 in	Actual: 58° | 48° T in Average: 63° | 42° 0.07 in	Actual: 62° | 49° 0.31 in Average: 63° | 42° 0.06 in

Calendar Legend

Weather History for KATT - February, 2015

February Precip Stats: Actual Month Total: 0.50 in | Average Month Total: 2.02 in

Precipitation accumulation is shown as one of these two metrics -

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Actual: 73° | 44° 0.02 in Average: 63° | 43° 0.07 in	Actual: 49° | 33° 0.00 in Average: 63° | 43° 0.07 in	Actual: 43° | 40° 0.26 in Average: 63° | 43° 0.06 in	Actual: 55° | 42° 0.06 in Average: 63° | 43° 0.06 in	Actual: 52° | 38° T in Average: 64° | 43° 0.07 in	Actual: 60° | 37° 0.00 in Average: 64° | 43° 0.06 in	Actual: 69° | 40° 0.00 in Average: 64° | 43° 0.07 in
Actual: 78° | 58° 0.00 in Average: 64° | 44° 0.07 in	Actual: 83° | 52° 0.00 in Average: 64° | 44° 0.08 in	Actual: 81° | 46° 0.00 in Average: 64° | 44° 0.07 in	Actual: 78° | 51° 0.00 in Average: 64° | 44° 0.08 in	Actual: 62° | 44° 0.00 in Average: 65° | 44° 0.07 in	Actual: 70° | 39° 0.00 in Average: 65° | 44° 0.08 in	Actual: 78° | 48° 0.00 in Average: 65° | 45° 0.07 in
Actual: 68° | 57° T in Average: 65° | 45° 0.08 in	Actual: 66° | 36° 0.01 in Average: 65° | 45° 0.07 in	Actual: 55° | 34° 0.00 in Average: 66° | 45° 0.08 in	Actual: 66° | 32° 0.00 in Average: 66° | 45° 0.08 in	Actual: 70° | 38° 0.00 in Average: 66° | 46° 0.07 in	Actual: 75° | 54° 0.00 in Average: 66° | 46° 0.07 in	Actual: 78° | 55° 0.00 in Average: 66° | 46° 0.08 in
Actual: 56° | 37° 0.02 in Average: 67° | 46° 0.07 in	Actual: 37° | 30° 0.01 in Average: 67° | 47° 0.07 in	Actual: 37° | 30° 0.00 in Average: 67° | 47° 0.07 in	Actual: 63° | 35° 0.01 in Average: 67° | 47° 0.07 in	Actual: 52° | 33° 0.00 in Average: 68° | 47° 0.07 in	Actual: 36° | 31° 0.01 in Average: 68° | 47° 0.08 in	Actual: 36° | 31° 0.10 in Average: 68° | 48° 0.08 in

Calendar Legend

Sunny Clear | Mostly Cloudy | Partly Cloudy | Cloudy | Rain | Snow

Hail Flurries | Thunderstorms | Hazy Fog | Sleet | '?' denotes 'chance of' | Unknown

Weather History for KATT - March, 2015

March Precip Stats: Actual Month Total: **4.83 in** | Average Month Total: **2.76 in**

Precipitation accumulation is shown as one of these two metrics -

<table>
<tr><th>Sunday</th><th>Monday</th><th>Tuesday</th><th>Wednesday</th><th>Thursday</th><th>Friday</th><th>Saturday</th></tr>
<tr>
<td>Actual: 43° | 35°
0.09 in
Average: 68° | 48°
0.08 in</td>
<td>Actual: 45° | 38°
0.02 in
Average: 69° | 48°
0.08 in</td>
<td>Actual: 63° | 41°
0.01 in
Average: 69° | 48°
0.09 in</td>
<td>Actual: 70° | 34°
0.15 in
Average: 69° | 49°
0.09 in</td>
<td>Actual: 47° | 31°
0.13 in
Average: 69° | 49°
0.09 in</td>
<td>Actual: 57° | 26°
0.00 in
Average: 70° | 49°
0.09 in</td>
<td>Actual: 60° | 38°
T in
Average: 70° | 49°
0.10 in</td>
</tr>
<tr>
<td>Actual: 54° | 47°
0.45 in
Average: 70° | 50°
0.09 in</td>
<td>Actual: 55° | 49°
2.17 in
Average: 70° | 50°
0.09 in</td>
<td>Actual: 63° | 50°
0.00 in
Average: 71° | 50°
0.09 in</td>
<td>Actual: 59° | 54°
0.00 in
Average: 71° | 50°
0.08 in</td>
<td>Actual: 73° | 52°
0.02 in
Average: 71° | 50°
0.09 in</td>
<td>Actual: 78° | 53°
0.00 in
Average: 71° | 51°
0.09 in</td>
<td>Actual: 78° | 53°
0.00 in
Average: 72° | 51°
0.09 in</td>
</tr>
<tr>
<td>Actual: 69° | 51°
0.00 in
Average: 72° | 51°
0.10 in</td>
<td>Actual: 77° | 52°
0.00 in
Average: 72° | 51°
0.09 in</td>
<td>Actual: 77° | 63°
0.01 in
Average: 73° | 52°
0.09 in</td>
<td>Actual: 81° | 60°
0.13 in
Average: 73° | 52°
0.09 in</td>
<td>Actual: 83° | 63°
0.00 in
Average: 73° | 52°
0.08 in</td>
<td>Actual: 71° | 57°
1.17 in
Average: 73° | 52°
0.09 in</td>
<td>Actual: 61° | 55°
0.43 in
Average: 74° | 52°
0.09 in</td>
</tr>
<tr>
<td>Actual: 78° | 57°
0.00 in
Average: 74° | 53°
0.09 in</td>
<td>Actual: 80° | 52°
0.00 in
Average: 74° | 53°
0.10 in</td>
<td>Actual: 83° | 59°
0.00 in
Average: 74° | 53°
0.10 in</td>
<td>Actual: 84° | 62°
0.00 in
Average: 75° | 53°
0.09 in</td>
<td>Actual: 70° | 54°
0.05 in
Average: 75° | 54°
0.10 in</td>
<td>Actual: 82° | 46°
0.00 in
Average: 75° | 54°
0.08 in</td>
<td>Actual: 84° | 48°
0.00 in
Average: 75° | 54°
0.09 in</td>
</tr>
<tr>
<td>Actual: 84° | 57°
0.00 in
Average: 76° | 54°
0.08 in</td>
<td>Actual: 80° | 64°
0.00 in
Average: 76° | 54°
0.08 in</td>
<td>Actual: 82° | 66°
0.00 in
Average: 76° | 55°
0.08 in</td>
<td></td><td></td><td></td><td></td>
</tr>
</table>

Calendar Legend

Weather History for KATT - April, 2015

April Precip Stats: Actual Month Total: **2.31 in** | Average Month Total: **2.09 in**

Precipitation accumulation is shown as one of these two metrics -

<table>
<tr><th>Sunday</th><th>Monday</th><th>Tuesday</th><th>Wednesday</th><th>Thursday</th><th>Friday</th><th>Saturday</th></tr>
<tr><td></td><td></td><td></td><td>Actual: 83° | 68°
T in
Average: 77° | 55°
0.07 in</td><td>Actual: 84° | 68°
0.00 in
Average: 77° | 55°
0.06 in</td><td>Actual: 86° | 66°
0.00 in
Average: 77° | 55°
0.06 in</td><td>Actual: 69° | 56°
0.00 in
Average: 77° | 56°
0.06 in</td></tr>
<tr><td>Actual: 69° | 59°
0.02 in
Average: 78° | 56°
0.06 in</td><td>Actual: 85° | 65°
0.00 in
Average: 78° | 56°
0.07 in</td><td>Actual: 87° | 68°
0.00 in
Average: 78° | 56°
0.06 in</td><td>Actual: 79° | 69°
T in
Average: 78° | 57°
0.06 in</td><td>Actual: 87° | 70°
0.00 in
Average: 78° | 57°
0.06 in</td><td>Actual: 74° | 56°
0.09 in
Average: 79° | 57°
0.06 in</td><td>Actual: 70° | 59°
T in
Average: 79° | 57°
0.06 in</td></tr>
<tr><td>Actual: 82° | 67°
0.01 in
Average: 79° | 58°
0.06 in</td><td>Actual: 87° | 64°
0.09 in
Average: 79° | 58°
0.06 in</td><td>Actual: 77° | 57°
0.00 in
Average: 80° | 58°
0.06 in</td><td>Actual: 83° | 54°
0.00 in
Average: 80° | 58°
0.06 in</td><td>Actual: 81° | 67°
0.01 in
Average: 80° | 59°
0.07 in</td><td>Actual: 75° | 66°
0.41 in
Average: 80° | 59°
0.07 in</td><td>Actual: 77° | 54°
0.57 in
Average: 80° | 59°
0.07 in</td></tr>
<tr><td>Actual: 89° | 57°
0.00 in
Average: 81° | 60°
0.07 in</td><td>Actual: 73° | 54°
0.00 in
Average: 81° | 60°
0.07 in</td><td>Actual: 81° | 51°
0.00 in
Average: 81° | 60°
0.07 in</td><td>Actual: 81° | 67°
T in
Average: 81° | 60°
0.07 in</td><td>Actual: 85° | 68°
0.00 in
Average: 82° | 61°
0.07 in</td><td>Actual: 85° | 69°
0.43 in
Average: 82° | 61°
0.08 in</td><td>Actual: 93° | 70°
0.04 in
Average: 82° | 61°
0.08 in</td></tr>
<tr><td>Actual: 86° | 69°
0.08 in
Average: 82° | 62°
0.09 in</td><td>Actual: 85° | 63°
0.56 in
Average: 82° | 62°
0.09 in</td><td>Actual: 65° | 53°
0.00 in
Average: 83° | 62°
0.08 in</td><td>Actual: 77° | 49°
0.00 in
Average: 83° | 62°
0.09 in</td><td>Actual: 83° | 50°
0.00 in
Average: 83° | 63°
0.10 in</td><td></td><td></td></tr>
</table>

Calendar Legend

Sunny Clear | Mostly Cloudy | Partly Cloudy | Cloudy | Rain | Snow

Hail Flurries | Thunderstorms | Hazy Fog | Sleet | '?' denotes 'chance of' | Unknown

Weather History for KATT - May, 2015

May Precip Stats: Actual Month Total: 17.59 in | Average Month Total: 4.44 in

Precipitation accumulation is shown as one of these two metrics -

<table>
<tr><th>Sunday</th><th>Monday</th><th>Tuesday</th><th>Wednesday</th><th>Thursday</th><th>Friday</th><th>Saturday</th></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td>Actual: 84° | 55°
0.00 in
Average: 83° | 63°
0.12 in</td><td>Actual: 83° | 58°
0.00 in
Average: 83° | 63°
0.12 in</td></tr>
<tr><td>Actual: 84° | 58°
0.00 in
Average: 84° | 63°
0.13 in</td><td>Actual: 84° | 66°
0.00 in
Average: 84° | 64°
0.12 in</td><td>Actual: 83° | 66°
3.84 in
Average: 84° | 64°
0.13 in</td><td>Actual: 87° | 71°
0.01 in
Average: 84° | 64°
0.13 in</td><td>Actual: 83° | 73°
0.02 in
Average: 85° | 65°
0.13 in</td><td>Actual: 79° | 73°
0.29 in
Average: 85° | 65°
0.13 in</td><td>Actual: 85° | 72°
0.02 in
Average: 85° | 65°
0.13 in</td></tr>
<tr><td>Actual: 87° | 76°
0.00 in
Average: 85° | 65°
0.13 in</td><td>Actual: 79° | 68°
0.40 in
Average: 85° | 66°
0.14 in</td><td>Actual: 69° | 65°
0.23 in
Average: 86° | 66°
0.13 in</td><td>Actual: 70° | 64°
1.12 in
Average: 86° | 66°
0.13 in</td><td>Actual: 87° | 68°
0.08 in
Average: 86° | 66°
0.14 in</td><td>Actual: 77° | 67°
0.36 in
Average: 86° | 67°
0.14 in</td><td>Actual: 87° | 67°
0.00 in
Average: 87° | 67°
0.15 in</td></tr>
<tr><td>Actual: 84° | 66°
2.60 in
Average: 87° | 67°
0.14 in</td><td>Actual: 88° | 73°
0.00 in
Average: 87° | 67°
0.15 in</td><td>Actual: 89° | 74°
T in
Average: 87° | 68°
0.14 in</td><td>Actual: 89° | 72°
0.33 in
Average: 87° | 68°
0.15 in</td><td>Actual: 76° | 62°
0.02 in
Average: 88° | 68°
0.15 in</td><td>Actual: 77° | 62°
0.03 in
Average: 88° | 68°
0.16 in</td><td>Actual: 87° | 66°
1.41 in
Average: 88° | 68°
0.15 in</td></tr>
<tr><td>Actual: 82° | 64°
0.76 in
Average: 88° | 69°
0.15 in</td><td>Actual: 82° | 66°
5.20 in
Average: 89° | 69°
0.16 in</td><td>Actual: 89° | 66°
0.00 in
Average: 89° | 69°
0.16 in</td><td>Actual: 85° | 67°
T in
Average: 89° | 69°
0.16 in</td><td>Actual: 87° | 69°
0.20 in
Average: 89° | 70°
0.17 in</td><td>Actual: 89° | 64°
0.67 in
Average: 89° | 70°
0.16 in</td><td>Actual: 88° | 70°
T in
Average: 90° | 70°
0.18 in</td></tr>
</table>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Actual: 86° | 67° 0.00 in Average: 90° | 70° 0.16 in						

Calendar Legend

Sunny Clear	Mostly Cloudy	Partly Cloudy	Cloudy	Rain	Snow
Hail Flurries	Thunderstorms	Hazy Fog	Sleet	'?' denotes 'chance of'	Unknown

Weather History for KATT - June, 2015

June Precip Stats: Actual Month Total: 8.89 in | Average Month Total: 4.33 in

Precipitation accumulation is shown as one of these two metrics -

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Actual: 88° | 64° 0.00 in Average: 90° | 70° 0.16 in	Actual: 90° | 67° 0.00 in Average: 90° | 70° 0.17 in	Actual: 89° | 67° 0.00 in Average: 90° | 71° 0.17 in	Actual: 88° | 68° 0.00 in Average: 91° | 71° 0.17 in	Actual: 90° | 69° T in Average: 91° | 71° 0.17 in	Actual: 90° | 70° 0.00 in Average: 91° | 71° 0.17 in
Actual: 91° | 70° 0.00 in Average: 91° | 71° 0.17 in	Actual: 93° | 71° 0.00 in Average: 91° | 71° 0.16 in	Actual: 95° | 72° 0.00 in Average: 91° | 72° 0.17 in	Actual: 93° | 72° 0.00 in Average: 92° | 72° 0.16 in	Actual: 94° | 73° 0.00 in Average: 92° | 72° 0.16 in	Actual: 93° | 75° 0.01 in Average: 92° | 72° 0.17 in	Actual: 95° | 75° T in Average: 92° | 72° 0.15 in
Actual: 86° | 72° 1.34 in Average: 92° | 72° 0.15 in	Actual: 89° | 74° 0.19 in Average: 92° | 72° 0.16 in	Actual: 83° | 73° 1.34 in Average: 92° | 73° 0.15 in	Actual: 89° | 72° 2.66 in Average: 92° | 73° 0.15 in	Actual: 90° | 73° 0.00 in Average: 93° | 73° 0.15 in	Actual: 84° | 71° 1.09 in Average: 93° | 73° 0.14 in	Actual: 83° | 72° 0.49 in Average: 93° | 73° 0.14 in
Actual: 86° | 72° 0.93 in Average: 93° | 73° 0.14 in	Actual: 89° | 72° 0.00 in Average: 93° | 73° 0.13 in	Actual: 92° | 75° 0.00 in Average: 93° | 73° 0.13 in	Actual: 92° | 74° 0.00 in Average: 93° | 73° 0.12 in	Actual: 93° | 73° 0.00 in Average: 93° | 74° 0.13 in	Actual: 93° | 76° 0.00 in Average: 93° | 74° 0.10 in	Actual: 91° | 74° 0.01 in Average: 94° | 74° 0.11 in
Actual: 91° | 73° 0.08 in Average: 94° | 74° 0.09 in	Actual: 93° | 74° 0.00 in Average: 94° | 74° 0.10 in	Actual: 94° | 73° 0.75 in Average: 94° | 74° 0.09 in				

Calendar Legend

Sunny Clear · Mostly Cloudy · Partly Cloudy · Cloudy · Rain · Snow

Hail Flurries · Thunderstorms · Hazy Fog · Sleet · '?' denotes 'chance of' · Unknown

Weather History for KATT - July, 2015

July Precip Stats: Actual Month to Date: 0.00 in | Average Month to Date: 0.37 in | Average Month Total: 1.88 in

Precipitation accumulation is shown as one of these two metrics -

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			Actual: 91° | 71° T in Average: 94° | 74° 0.08 in	Actual: 91° | 70° T in Average: 94° | 74° 0.07 in	Actual: 91° | 76° T in Average: 94° | 74° 0.07 in	Actual: 92° | 76° 0.00 in Average: 94° | 74° 0.08 in
Actual: 91° | 76° 0.00 in Average: 94° | 74° 0.07 in	Forecast: 92° | 76° 0.0 in Average: - | - - in	Forecast: 92° | 75° 0.0 in Average: 95° | 74° 0.07 in	Forecast: 94° | 75° 0.0 in Average: 95° | 74° 0.07 in	Forecast: 95° | 74° 0.0 in Average: 95° | 74° 0.07 in	Forecast: 95° | 73° 0.0 in Average: 95° | 74° 0.07 in	Forecast: 94° | 72° 0.0 in Average: 95° | 74° 0.07 in
Forecast: 96° | 73° 0.0 in Average: 95° | 74° 0.06 in	Forecast: 98° | 72° 0.0 in Average: 95° | 74° 0.07 in	Forecast: 98° | 72° 0.0 in Average: 95° | 74° 0.06 in	Forecast: 96° | 73° 0.0 in Average: 96° | 74° 0.05 in	Record: 105° | 64° 5.12 in Average: 96° | 74° 0.06 in	Record: 105° | 68° 3.53 in Average:96° | 75° 0.05 in	Record: 107° | 60° 1.52 in Average:96° | 75° 0.05 in
Record: 105° | 68° 4.85 in Average:96° | 75° 0.05 in	Record: 104° | 65° 1.62 in Average:96° | 75° 0.06 in	Record: 104° | 67° 8.56 in Average:96° | 75° 0.05 in	Record: 104° | 61° 1.36 in Average:96° | 75° 0.05 in	Record: 104° | 64° 1.44 in Average:97° | 75° 0.04 in	Record: 105° | 66° 1.10 in Average:97° | 75° 0.05 in	Record: 105° | 65° 1.22 in Average:97° | 75° 0.05 in
Record: 109° | 67° 1.76 in Average:97° | 75° 0.06 in	Record: 105° | 68° 3.28 in Average:97° | 75° 0.05 in	Record: 105° | 68° 3.20 in Average:97° | 75° 0.06 in	Record: 105° | 62° 4.81 in Average:97° | 75° 0.06 in	Record: 104° | 67° 3.06 in Average:97° | 75° 0.05 in	Record: 106° | 66° 1.00 in Average:97° | 75° 0.06 in	

Calendar Legend

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Homestead Oaks (HTC # 13109).

RECOMMENDED ACTION

WHEREAS, FC SW Housing, LP ("Development Owner") was allocated $1,252,000 in 9% Housing Tax Credits in 2013 to construct Homestead Oaks (the "Development"), a development consisting of 140 new multifamily units in Austin;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2015, and required by Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the 2-year period described in Internal Revenue Code §42(h)(1)(E)(i) and the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued and the notice was amended on Friday, June 5, 2015, and on Tuesday, June 9, 2015, to include Travis County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms and flooding in May of 2015 occurred during construction at the time of 50% construction completion andimpacted construction crews on the Development and delayed construction progress during the months of May and June 2015, which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a six month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units the requested changes do not negatively affect the Development or impact the long term viability of the transaction and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49;

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a three month extension with the further authorization for the Executive Director to grant an additional three month extension of the placed in service deadline is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Homestead Oaks (fka Homestead Apartments) was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 140 unit, general population, new construction property located in Austin. The Owner, FC SW Housing, LP (Walter Moreau), and its General Partner, FC Homestead Housing, LLC, are owned and managed by Foundation Communities, Inc., a non-profit corporation.

The Owner, on September 9, 2015, submitted a letter to the Department requesting a six month extension to the date the Owner is required to place each building and unit in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement, respectively. The Owner is seeking the relief under IRS Revenue Procedure 2007-54 (superseded and modified by IRS Revenue Procedure 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

According to the Owner, more than a month of construction progress was lost between May and June of 2015 due to the heavy rainfall received in Travis County, which exceeded the historical City record at 17.5 inches. The Owner submitted a weather log showing a total of 54 weather-impacted days, 17 of which can be attributed to the disaster period of May 4 – June 22nd. The Owner's request states that the resulting wet conditions and flooding impacted mobility on the construction site, shipment and receipt of storage materials, and the hiring of crews to complete exterior work. The Owner also remarked that insulation installation, which was considered critical, was delayed for several weeks while waiting for the site to dry out. The Development Owner has discussed that the development team is working diligently to make up lost time and place buildings in service before December 31, 2015, but with the impact of the noted delays and the potential for further delays on the part of City of Austin inspections staff, the Owner is concerned about the short window of time available for the completion of construction and receipt of the Certificates of Occupancy. The Owner's last Construction Status Report dated October 16, 2015 confirms the expectations of delays, stating that the development is 5-7 weeks behind its original completion schedule of October, 2015. CA Partners, the third party preparing the construction reports for the syndicator, estimates a completion date of December, 2015 and discuss that delays are due to excessive rain and muddy site conditions early in 2015 which have placed the project behind schedule. At the time of the October inspection, the Development was considered to be 79% complete.

The Owner has submitted verification of the FEMA Notices of Major Disaster Declaration released on May 29, 2015 as well as the amended notices released on June 5, 2015, and June 9, 2015, that confirm the President's issuing of a major disaster declaration due to severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015, and continuing under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The amended notices released on June 5, 2015, and June 9,

2015, included Travis County as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Procedure for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure Ruling, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The Department's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610 due to the IRS on February 28th.

The Owner has indicated that they are making all efforts to still meet the current deadline. Therefore, staff is recommending a three month extension with an additional three months to address any further delays as determined to be necessary by the Executive Director.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC § 10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request as presented herein.

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September 9, 2015

Laura DeBellas
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Request for Placed in Service Extension – Internal Revenue Procedure Ruling 2007-54
TDHCA #13109 – Homestead Oaks

Dear Laura:

Please accept this letter as a request for TDHCA to review a request for an extension of six months on the Placed in Service deadline for our Homestead Oaks project (TDHCA #13109) located in Austin, Travis County as allowed by Section 5.03 of Internal Revenue Procedure Ruling 2007-54. As a 2013 9% LIHTC award, the Placed in Service (PIS) deadline for Homestead Oaks is December 31, 2015. However, Homestead Oaks lost more than a month of construction progress due to the heavy rainfall received in Travis County during the months of May and June 2015. While our development team is working diligently to make up lost time and place the building in service before 12-31-2015, we feel it is prudent to move forward with an extension request.

Section 6 of IRS Procedure Ruling 2007-54 (the Ruling) requires approval "from the Agency that issued the carryover allocation" in order to grant the extension. This is a formal request for consideration of this approval by the Texas Department of Housing and Community Affairs. **A copy of the Ruling is attached for reference.**

Eligibility for Extension Under IRS Procedure Ruling 2007-54:

Section 5.03 of the Ruling states:
".03 If an Owner has a carryover allocation for a building located in a **major disaster area** and the area is declared a major disaster area during the 2- year period described in §42(h)(1)(E)(i), the Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the 2-year period."

Major Disaster Area is defined as:
"A city and/or county or other local jurisdiction so designated by FEMA for Individual Assistance and/or Public Assistance under the President's disaster declaration is a major disaster area for purposes of the relief provisions under sections 5, 6, 7, 8, 9, 10 and 12 of this revenue procedure."

The storms and floods that pounded Central Texas during the month of May were declared a major disaster by FEMA-4223-DR on May 29, 2015 and provides for both Individual and Public Assistance. Amendment No. 1 effective June 5, 2015 added Travis County to the list of counties eligible for Individual Assistance. Amendment No. 2 effective June 9, 2010 added Travis County to the list of counties eligible for

Public Assistance. **Copies of the original declaration and amendments are attached.**

Impact of Major Disaster on Homestead Oaks:
The rainfall total for Austin in May 2015 was 17.5 inches, which beat out the old record of 14 inches set in 1895. This much rain in such a short amount of time impacted mobility on site, shipment and receipt of storage materials and getting crews to complete exterior work. The insulation installation, which was critical path, was delayed for several weeks after the rains waiting for the site to dry out. Projects have been delayed all over town which has made a tight labor and subcontractor situation even worse and made it challenging to make up time. The City of Austin is overwhelmed with inspections right now making it difficult to estimate the timing of inspections needed to get our Certificate of Occupancy on Homestead Oaks.

We ask that TDHCA consider this extension at the November 12, 2015 board meeting. By this time, we will have a more refined schedule and will allow staff enough time to write up the extension for the board book. We feel that the October 15th meeting may be too soon and the December 17th meeting may be too late.

We thank you for your time and consideration of this request. Please do contact us with any questions.

Best,

Walter Moreau
Executive Director

client focused + responsible design

h+uo architects, LLP
1010 E. 11th Street
Austin, TX 78702
512.474.8548
512.474.8643

October 16, 2015

Re: Homestead Oaks
Change Order #4

Change Order #4 resulted from 54 days of documented bad weather since the start of construction. The severity and extent of this inclement weather could not have been reasonably foreseen by the contractor and was beyond their control.

Respectfully,

Tom Hatch, FAIA
Senior Partner

BAILEY ELLIOTT CONSTRUCTION, INC.
General Contractor

Weather Day Log

Homestead Oaks
3226 W. Slaughter Lane

Rain Day	Day of the Week	Date	Amount of Precipitation	Weather Report Attached	Activity
1	TH	9/18/14	1.46 In.	Yes	Rain - sitework
2	F	9/19/14	0.57 In.	Yes	Rain & Mud - sitework
3	M	10/13/14	0.16 In.	Yes	Mud - sitework
4	TH	11/4/14	1.12 In.	Yes	Rain - sitework, utilities
5	W	11/5/14	1.68 In.	Yes	Rain - sitework, utilities
6	TH	11/6/14	0.05 In.	Yes	Mud - sitework, utilities
7	TH	11/20/14	0.27 In.	Yes	Rain - Conc, utilities
8	F	11/21/14	0.05 In.	Yes	Mud- Conc, utilities
9	S	11/22/14	3.40 In.	Yes	Rain - Conc, utilities
10	TH	12/4/14	0.04 In.	Yes	Mud - Conc, utilities
11	W	12/17/14	0.19 In	Yes	Rain - Conc, Utilities, masonry
12	T	12/30/14	T	Yes	Rain - masonry, utilities
13	F	1/2/15	0.63 In.	Yes	Rain - masonry, utilities
14	W	1/21/15	0.41 In.	Yes	Rain - Framing, utilies
15	TH	1/22/15	2.44 In.	Yes	Rain - Framing, utilies
16	F	1/23/15	0.41 In.	Yes	Rain - Framing, utilies
17	S	1/31/15	0.26 In.	Yes	Rain - Framing, steel
18	T	2/3/15	0.23 In.	Yes	Rain - Fraiming, steel
19	M	2/23/15	T	Yes	Frozen - Conc, framing
20	T	2/24/15	T	Yes	Frozen - Conc, framing, steel
21	M	3/2/15	0.04 In.	Yes	Mud - Conc, framing, elect VG
22	T	3/3/15	0.02 In.	Yes	Mud - Conc, framing
23	W	3/4/15	0.03 In.	Yes	Rain - Conc, framing
24	M	3/9/15	1.58 In.	Yes	Rain - Conc, framing
25	TH	3/12/15	0.02 In.	Yes	Rain & framing
26	T	3/17/15	T	Yes	Rain & framing
27	F	3/20/15	0.98 In.	Yes	Rain & framing
28	S	3/21/15	0.38 In.	Yes	Rain - Conc, framing
29	TH	3/26/15	0.06 In.	Yes	Rain - Framing
30	F	4/10/15	0.08 In.	Yes	Rain - Sheathing
31	S	4/11/15	0.01 In.	Yes	Wet, rain - Sheathing
32	S	4/18/15	0.38 In.	Yes	Rain - Sheathing
33	TH	4/23/15	No Recordable Amt.	Yes	Wet - Roof
34	F	4/24/15	0.69 In.	Yes	Rain - Roof
35	S	4/25/15	0.06 In.	Yes	Wet - Roof
36	T	5/5/15	1.76 In.	Yes	Rain - Siding, pond
37	W	5/6/15	T	Yes	Mud, wet - Siding, pond
38	TH	5/7/15	T	Yes	Mud, wet - Siding, pond
39	M	5/11/15	0.51 In.	Yes	Rain - Siding, pond, roof
40	T	5/12/15	0.43 In.	Yes	Rain - Siding, pond, roof
41	W	5/13/15	1.67 In.	Yes	Rain - Siding, pond, roof
42	TH	5/14/15		Yes	Mud, wet - Siding, pond
43	SU	5/17/15	2.29 In.	Yes	Rain - Siding, pond, roof
44	TH	5/21/15	0.02 In.	Yes	Mud, wet - Siding, pond, paing
45	F	5/22/15	0.02 In.	Yes	Mud, wet - Siding, pond
46	S	5/23/15	1.86 In.	Yes	Rain - Siding, paint
47	W	5/27/15	0.20 In.	Yes	Rain - Siding, paint, pond
48	TH	5/28/15	T	Yes	Wet, Mud - EIFS, paint
49	M	6/15/15	0.25 In.	Yes	Wet, Mud - EIFS, paint
50	T	6/16/15	0.90 In.	Yes	Wet, Mud - EIFS, paint
51	W	6/17/15	0.26 In.	Yes	Wet, Mud - EIFS, paint
52	M	6/22/15	No Recordable Amt.	Yes	Wet, Mud - EIFS, paint
53	T	6/30/15	0.63 In.	Yes	Wet, Mud - EIFS, paint
54	W	7/1/15	T	Yes	Wet, Mud - EIFS, paint

8320 Bee Caves Road * Suite 200 * Austin, TX 78746
Ph: (512) 327-3951 * Fax: (512) 327-3852

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, Section 42; 1.42-13)

Rev. Proc. 2007-54

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for temporary relief from certain requirements of § 42 of the Internal Revenue Code for owners of low-income housing buildings (Owners) and housing credit agencies of States or possessions of the United States (Agencies) in major disaster areas declared by the President. This revenue procedure supersedes the relief provisions of Rev. Proc. 95-28, 1995-1 C.B. 704.

SECTION 2. CHANGE

.01 Under §1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal

Revenue Bulletin. Rev. Proc. 95-28 provided a procedure for temporary relief from certain requirements under § 42 in major disaster areas. Sections 5 and 6 of Rev. Proc. 95-28 provided certain relief from the carryover allocation provisions under § 42(h)(1)(E) and § 1.42-6. The carryover allocation provisions were later amended by section 135(a)(1) of the Community Renewal Tax Relief Act of 2000 (Public Law 106-554) to allow a building that receives an allocation of credit in the second half of a calendar year to qualify for the carryover allocation of credit if the taxpayer expends an amount equal to 10 percent or more of the taxpayer' s reasonably expected basis in the building within six months of receiving the allocation. In addition, § 1.42-6 was modified under T.D. 9110 on December 31, 2003, to reflect the amendments to § 42(h)(1)(E). This revenue procedure makes changes to the provisions of Rev. Proc. 95-28 to extend temporary relief in major disaster areas to the carryover allocation provisions taking into account the amendments to § 42 and changes to the regulations.

.02 Section 8 of Rev. Proc. 95-28 provided certain relief to Agency compliance monitoring requirements under § 1.42-5. Several provisions of § 1.42-5 were subsequently modified under T.D. 8859 on January 13, 2000. This revenue procedure incorporates the modified compliance monitoring requirements under T.D. 8859.

.03 The Internal Revenue Service (Service) has issued several Notices suspending certain § 42 requirements for Owners that provide temporary housing to individuals residing in certain major disaster areas who have been displaced because their residences have been destroyed or damaged as a result of the disaster. See Notice 2004-74, 2004-2 C.B. 875; Notice 2004-75, 2004-2 C.B. 876; and Notice 2004-76, 2004-2 C.B. 878; Notice 2005-69, 2005-2 C.B. 622; and Notice 2006-11, 2006-7

I.R.B. 457. This revenue procedure provides a procedure for Owners to rent on a temporary basis vacant low-income units to certain displaced low-income individuals that resided in major disaster areas described in section 4 of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and Owners in major disaster areas, as defined in section 4 of this revenue procedure.

SECTION 4. MAJOR DISASTER AREA

When a disaster occurs that warrants assistance from the federal government, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), Title 42 U.S.C. 5121-5206 (2000 and Supp. IV 2004) authorizes the President to issue a major disaster declaration for the affected area. When the President issues such a declaration, the Federal Emergency Management Agency (FEMA) publishes a notice in the Federal Register designating particular cities and/or counties or other local jurisdictions covered by the President’ s major disaster declaration as eligible for Individual Assistance and/or Public Assistance. A city and/or county or other local jurisdiction so designated by FEMA for Individual Assistance and/or Public Assistance under the President’ s disaster declaration is a major disaster area for purposes of the relief provisions under sections 5, 6, 7, 8, 9, 10, and 12 of this revenue procedure. The emergency housing relief of section 11 of this revenue procedure applies only in States or possessions where FEMA designates cities and/or counties or other local jurisdictions for Individual Assistance.

SECTION 5. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is an allocation of low-income housing credits made in a year before the project is placed in service.

.02 If an Owner has a carryover allocation for a building located in a major disaster area, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner' s reasonably expected basis in the project (land and depreciable basis) no later than six months after the date that Owners would otherwise be required to meet the 10-percent basis requirement under § 1.42-6(a)(2)(i) and (ii). See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a major disaster area and the area is declared a major disaster area during the 2-year period described in § 42(h)(1)(E)(i), the Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the 2-year period. See § 1.42-6 for specific rules on carryover allocations.

.04 If an Owner obtains the relief provided in section 5.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) by the extension period granted under the authority of section 5.02, the Service will treat the carryover allocation under § 1.42-6(a)(2)(i)(ii) as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 5.02, provided the Agency complies with the requirements of § 1.42-14(d)(3). See § 1.42-14 for specific rules on returned credits.

.05 If an Owner obtains the relief provided in section 5.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) by the close of the calendar year following the end of the 2-year period of § 42(h)(1)(E)(i), the Service will treat the carryover allocation credit amount as a credit returned to the Agency on January 1 of the second year following the two year period of § 42(h)(1)(E)(i), provided the Agency complies with the requirements of § 1.42-14(d)(3).

SECTION 6. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in sections 5.02 or 5.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation.

.02 The Agency may approve the carryover allocation relief provided in sections 5.02 and 5.03 of this revenue procedure only for projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a disaster that led to a major disaster declaration under the Stafford Act. An Agency may make this determination on an individual project basis or may determine, because of the extent of the damage in a major disaster area that all Owners or a certain group of Owners in the major disaster area warrant the relief provided in sections 5.02 and 5.03 of this revenue procedure. An Agency has the discretion to provide less than the full amount of relief allowed under sections 5.02 and 5.03 or no relief based upon all the facts and circumstances.

.03 An Agency that chooses to approve the relief provided in sections 5.02 and 5.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The

Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that provides the relief in sections 5.02 and 5.03 of this revenue procedure must report to the Service projects granted relief by attaching the required documentation as provided in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that had received its approval of the carryover allocation relief provided in sections 5.02 and 5.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 7. RECAPTURE RELIEF

.01 Under § 42(j)(4)(E), a building (1) that is beyond the first year of the credit period and (2) that, because of a disaster that led to a major disaster declaration, has suffered a reduction in qualified basis that would cause it to be subject to recapture or loss of credit will not be subject to recapture or loss of credit if the building' s qualified basis is restored within a reasonable restoration period. The Agency that monitors the building for compliance with § 42 shall determine what constitutes a reasonable restoration period, not to exceed 24 months after the end of the calendar year in which the President issued a major disaster declaration for the area where the building is located. If the Owner of the building fails to restore the building within the reasonable restoration period determined by the Agency, the Owner shall lose all credit claimed during the restoration period and suffer recapture for any prior years of claimed credit under the provisions of § 42(j)(1).

.02 To determine the credit amount allowable during the reasonable restoration period, an Owner described in section 7.01 of this revenue procedure must use the building' s qualified basis at the end of the taxable year that preceded the President' s major disaster declaration.

.03 Section 1.42-5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency that monitors the building for compliance with § 42 whether or not an Owner obtains the relief provided in section 7.01 of this revenue procedure.

.04 As part of its review procedure adopted under § 1.42-5(c)(2), an Agency must determine whether the Owner described in section 7.01 of this revenue procedure has restored the building' s qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agency Report of Noncompliance, any failure to restore qualified basis within such period.

SECTION 8. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date the building is restored and placed back into service under section 7.01 of this revenue procedure.

.02 The granting of compliance monitoring relief to an Agency does not extend the compliance monitoring deadlines for Owners in major disaster areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a major disaster, the Agency must report on the Form 8823 how the major disaster contributed to the noncompliance.

SECTION 9. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings in the first year of the credit period that are located in a major disaster area and are severely damaged or destroyed as a result of a major disaster, an Agency has the discretion to treat the allocation as returned credit to the Agency in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1) until the project is restored. The tolling time period shall not extend more than 24 months after the end of the calendar year in which the President declared the area a major disaster area under the Stafford Act. No qualified basis shall be established until the building is restored and no low-income housing credit shall be claimed during the restoration period of such first-year buildings.

.02 An Agency that provides the relief in section 9.01 of this revenue procedure must report to the Service those projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 10. AMOUNT OF CREDIT ALLOWABLE TO RESTORED BUILDING

.01 Except as provided in section 10.02 of this revenue procedure, in the case of a building for which a credit is allowed under § 42, no additional credit is permitted under § 42 for costs to restore, by reconstruction or replacement, the building to its pre-casualty condition under § 42(j)(4)(E).

.02 An Agency may allocate credits for rehabilitation expenditures, as defined under § 42(e), that are in excess of the eligible basis immediately prior to the casualty. For this purpose, the eligible basis immediately prior to the casualty includes the original eligible basis and any subsequent rehabilitation expenditures treated as a separate new building under § 42(e).

SECTION 11. EMERGENCY HOUSING RELIEF

.01 Approval of Housing Credit Agency. Without prior authorization from the Service, an Agency may permit some or all Owners within the Agency' s jurisdiction to provide temporary emergency housing after a major disaster to displaced low-income individuals that were living within the Agency' s jurisdiction at the time of the major disaster. Prior to housing any displaced low-income individuals, the Owner must obtain written approval from the Agency to participate in temporary emergency housing relief. For this purpose, temporary emergency housing means housing displaced low-income individuals for a period not to exceed 4 months beyond the date of the President' s major disaster declaration. An individual is a displaced individual if the individual was displaced from his/her principal place of residence as a result of a major disaster and the principal place of residence is in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the major disaster.

.02 Requirements for Owner. The temporary housing of displaced low-income individuals in low-income units without meeting the documentation requirements of § 1.42-5(b)(1)(vii) will not cause the building to suffer a reduction in qualified basis that would cause the recapture of low-income housing credits, provided the owner ensures the following requirements are met:

(1) Temporary Self-Certification of Income Requirements. An Owner may rely on a displaced low-income individual' s self-certification of income eligibility signed under penalties of perjury in applying for temporary tenancy in the building as a result of a major disaster declaration as defined in section 4 of this revenue procedure. The self-certification shall provide that such individual' s income will not exceed the applicable income limits of § 42 at the beginning of the individual' s tenancy. The self-certification

shall not extend for more than 4 months beyond the date of the President' s major disaster declaration. The self-certification may be relied on by the Owner for purposes of determining the building' s qualified basis under § 42(c)(1), and for purposes of satisfying the project' s 20-50 or 40-60 minimum set-aside requirement as elected by the Owner under § 42(g)(1). During the 4-month self-certification period, the self-certified tenant is deemed a qualified tenant. After the 4-month self-certification period, the Owner must obtain all required documentation required under § 42 to support the tenant' s continued status as a qualified low-income individual.

(2) Self-Certification of Status as Displaced Individual. An owner may rely on an individual' s certification signed under penalties of perjury that the individual was displaced from his/her principal place of residence as a result of a major disaster and the principal place of residence is in a city, county, or other local jurisdiction designated for Individual Assistance as a result of the major disaster.

(3) Recordkeeping. To comply with the requirements of § 1.42-5, Owners must maintain and certify certain information concerning each displaced low-income individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, the temporary self-certification of income, and the self-certification of status as a displaced individual. The Owner must also maintain and report to the Agency at the end of the emergency housing period a list of the names of the displaced individuals, and the dates the displaced individuals began and ceased temporary occupancy. This information shall be provided to the Service upon request.

(4) Rent Restrictions. Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) Protection of Existing Tenants. Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

(6) Suspension of Non-Transient Requirements. The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the 4-month temporary emergency housing period described in this section 11 of this revenue procedure.

SECTION 12. OTHER RELIEF

Under the authority granted in § 42(n) and in accordance with § 1.42-13(a), the Service will consider granting relief similar to that described in sections 5.02, 5.03, 7.01, or section 11 of this revenue procedure for situations that are brought to its attention and not covered by this revenue procedure.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 95-28, 1995-1 C.B. 704, is superseded.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective for a major disaster declaration issued by the President under the Stafford Act on or after July 2, 2007.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jack Malgeri of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information

regarding this revenue procedure contact Mr. Malgeri at (202) 622-3040 (not a toll free number).

Initial Notice

Main Content
Date of Notice:
Friday, May 29, 2015
Billing Code 9111-23-P
DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
[Internal Agency Docket No. FEMA-4223-DR]
Docket ID FEMA-2015-0002
Texas; Major Disaster and Related Determinations
AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.
SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.
EFFECTIVE DATE: May 29, 2015.
FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 29, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

> I have determined that the damage in certain areas of the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Texas.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Harris, Hays, and Van Zandt Counties for Individual Assistance.

Cooke, Gaines, Grimes, Harris, Hays, Navarro, and Van Zandt Counties for Public Assistance.

All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Amendment No. 1

Main Content
Date of Notice:
Friday, June 5, 2015
Billing Code 9111-23-P
DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
[Internal Agency Docket No. FEMA-4223-DR]
Docket ID FEMA-2015-0002
Texas; Amendment No. 1 to Notice of a Major Disaster Declaration
AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.
SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.
EFFECTIVE DATE: June 5, 2015.
FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

Bastrop, Blanco, Caldwell, Denton, Eastland, Fort Bend, Guadalupe, Henderson, Hidalgo, Johnson, Milam, Montague, Rusk, Smith, Travis, Wichita, Williamson, and Wise Counties for Individual Assistance.

Gaines and Navarro Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.
/s/

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency.

Amendment No. 2

Date of Notice:
Tuesday, June 9, 2015
Billing Code 9111-23-P
DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
[Internal Agency Docket No. FEMA-4223-DR]
Docket ID FEMA-2015-0002
Texas; Amendment No. 2 to Notice of a Major Disaster Declaration
AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.
SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated
May 29, 2015, and related determinations.
EFFECTIVE DATE: June 9, 2015.
FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

Angelina, Archer, Atascosa, Baylor, Bowie, Burleson, Cass, Cherokee, Clay, Comal, Comanche, Fannin, Fayette, Garza, Gillespie, Grayson, Harrison, Hood, Houston, Jasper, Kaufman, Kendall, Lamar, Lee, Liberty, Lynn, Madison, Nacogdoches, Newton, Polk, Refugio, Sabine, San Jacinto, Tyler, Uvalde, Walker, Wharton, Wilson, and Zavala Counties for Public Assistance.

Bastrop, Blanco, Caldwell, Denton, Henderson, Johnson, Milam, Montague, Rusk, Travis, Williamson and Wise Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.
/s/

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Mariposa at Pecan Park (HTC # 13144).

RECOMMENDED ACTION

WHEREAS, Mariposa Pecan Park LP ("Development Owner") was allocated $1,405,352 in 9% Housing Tax Credits in 2013 to construct Mariposa at Pecan Park (the "Development"), an elderly development consisting of 180 new multifamily units in La Porte, Harris County;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement and Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49, allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in a major disaster area declared a major disaster area during the 2-year period described in §42(h)(1)(E)(i) and the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, the Owner is requesting disaster relief in the form of an extension to the Development's placed in service deadline from December 31, 2015 to March 1, 2015;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued and the notice was amended on Friday, June 5, 2015, and on Tuesday, June 9, 2015, to include Harris County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated excessive rain and flooding has impacted construction crews, indicating that approximately 100 rain days have been documented which translates into over 150 days of lost productivity such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, aside from delaying the availability of affordable units the requested changes do not negatively affect the Development or impact the long term viability of the transaction and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that the requested and recommended placed in service deadline extension is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

The Mariposa at Pecan Park was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 180 unit, elderly population, new construction property located in La Porte. The Owner, Mariposa Pecan Park LP and its Co-General Partners, Mariposa Pecan Park General Partner LLC, are owned and managed by Mariposa Pecan Park HUB Partner LLC, LRL Interest LLC and Laura Leshikar (a 70% HUB Member) and SSFP Mariposa Pecan Park LLC, Stuart Shaw and family members.

The Owner, on October 28, 2015, submitted a letter to the Department requesting an extension to the required placed in service date in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Owner is seeking the relief under IRS Procedure Ruling 2007-54 (superseded and modified by IRS Procedure Ruling 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

According to the Owner, approximately 100 total weather-related delays occurred between May 2014 and October, 2015, resulting into over 150 days of lost productivity on the job site. The Owner's request states that the rain prevented the completion of site work, filling a detention pond, paving and slabs, all of which were on the critical path for completion of the Development. The extraordinary rain prevented a pond from being backfilled that was located under buildings 1 and 4. Once the pond was filled, 300+ piers had to be drilled under the building which again was delayed by the extraordinary rains. Framing on the second half of the project did not commence until June. While half of the project was proceeding well, the other half experienced significant delays from the rain because the piers and slabs could not be completed during the wet spring in a timely manner.

The latest Construction Status Report submitted to the Department on October 8, 2015, reports that as of the period ending September 30, 2015, construction is approximately 82% complete. A field observation was conducted on the Development site on September 29, 2015, and the report states that the construction schedule is conservative and the December 31, 2015 Placed in Service deadline is still expected to be met.

The Owner and general contractor are working diligently using additional crews, overtime, and other methods to improve on the schedule and meet the deadline. However, given the extenuating circumstances and extraordinary rain that has occurred, they want to plan for the worst case scenario.

The Owner has referred in the request to the FEMA Notices of Major Disaster Declaration released on May 29, 2015 as well as the amended notices released on June 5, 2015, and June 9, 2015, that confirm the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015, and continuing under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Harris County is listed on the declaration as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Ruling for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure Ruling, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of a disaster that led to a major disaster declaration under the Stafford Act. The Department's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610, due to the IRS on February 28th.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC § 10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. In addition, staff has the ability, in accordance with provisions in 10 TAC § 10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request.

BONNER CARRINGTON

TO: LUCY TREVINO- TDHCA

FROM: STUART SHAW

REGARDING: MARIPOSA APARTMENT HOMES AT PECAN PARK
TDHCA #13144
PLACED IN SERVICE DATE EXTENSION REQUEST

DATE: OCTOBER 27, 2015

Dear Ms. Trevino,

I am sending you the following request on behalf of the owner of Mariposa Apartment Homes at Pecan Park (MPP), TDHCA #13144, located in LaPorte, Harris County, Texas. MPP is located in the federally declared disaster area FEMA-4223-DR, Texas Disaster Declarationwhich allows relief, among many other forms of assistance, to the placed in service (PIS) deadline for affordable housing communities affected by the disaster.

In May, Governor Greg Abbott requested a major disaster declaration due to severe storms, tornadoes, straight-line winds, and flooding. The federal government granted the request and declared the areas on the attached map as part of a federally declared disaster area. Harris County is included in the area that is eligible for individual and public assistance. MPP has experienced construction delays as a result of these storms and is in need of assistance.

To date, MPP has experienced approximately 100 days of documented rain days (see attached) which translates into over 150 days of lost productivity on the job site. The rain prevented the completion of site work, filling a detention pond, paving and slabs, all of which were on the critical path for completion of MPP. The extraordinary rain prevented a pond from being backfilled that was located under buildings 1 and 4. Once the pond was filled, 300+ piers had to be drilled under the building which again were delayed by the extraordinary rains. Framing on the second half of the project did not commence until June. While half of the project was proceeding well, the other half experienced significant delays from the rain because the piers and slabs could not be completed during the wet spring in a timely manner. The attached aerial photos detail the progress on the site from last fall through the summer.

The general contractor has been working diligently with subcontractors to keep the project on schedule and is still working to meet the December 31, 2015 PIS deadline. We take great pride in meeting the PIS deadline and are actively managing the schedule to meet the original PIS deadline. We are hopeful that the the original PIS deadline can be met, but given the extenuating circumstances and extraordinary rain that has occurred at MPP we need to plan for the worst case scenario.

In order to avoid an emergency request to the TDHCA in December, the MPP team respectfully requests an extension of the PIS deadline until March 1, 2015 for MPP in accordance with the allowances provided by the federally declared disaster area. If you have any questions, please contact Casey Bump in my office at 512-220-9902.

Sincerely,

Stuart Shaw
Owner's Representative

Attachments

RAIN LOGS

MPP Rain Log	
DATE	**RAIN FALL IN INCHES**
5/13/2014	2.25
5/14/2014	Mud
5/27/2014	2.25
5/28/2014	2.75
5/29/2014	0.5
6/24/2014	2
6/25/2014	1.5
6/26/2014	0.5
7/5/2014	1.25
7/17/2014	1.25
7/18/2014	0.4
7/23/2014	0.5
7/29/2014	1
7/31/2014	1.5
8/19/2014	0.5
8/28/2014	0.5
8/29/2014	0.5
8/30/2014	1.5
9/2/2014	0.25
9/6/2014	0.4
9/13/2014	1
9/18/2014	3.5
9/19/2014	4
9/20/2014	4
10/3/2014	1.5
10/4/2014	1
10/6/2014	1
10/8/2014	1
10/9/2014	0.25
10/13/2014	1.5
10/14/2014	1
11/6/2014	2.5
11/11/2014	0.25
11/13/2014	0.25
11/17/2014	2.5
11/21/2014	1.5
11/22/2014	1.5
12/1/2014	0.25
12/5/2014	0.33
12/8/2014	0.25

12/19/2014	3
12/23/2014	0.05
12/27/2014	2
1/2/2015	1
1/3/2015	2.5
1/9/2015	0.25
1/10/2015	1.5
1/15/2015	0.25
1/22/2015	4
1/23/2015	0.05
2/3/2015	0.25
2/5/2015	0.125
3/2/2015	0.25
3/9/2015	1.5

BONNER CARRINGTON
Construction

Weather History

Summary Log, Grouped by Date

Mariposa Pecan Park
3535 Canada Road
La Porte, TX 77581

Project # 11-1822
Tel: (512) 970-9480 Fax: (512) 377-1651

Mariposa Pecan Park LP

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
3/6/2015	59			0.00	0.00		Dry No rain/mud
3/7/2015	40			0.00	0.00		Dry , Overcast
3/9/2015	40			0.00	0.00		Dry , Overcast
3/11/2015	54			0.00	0.00		Overcast, Overcast
3/11/2015	40			0.00	0.00		Dry , Overcast
3/12/2015	56	57		1.50	1.50		Storm 1 1/2" rain by 7:30 Steady sprinkles
3/13/2015	57	57		0.50	2.00		Steady sprinkles this morning. Starting to clear at 8:45. Overcast, Light Rain
3/14/2015	56	74		0.00	2.00		Sunny
3/16/2015	59	63		0.00	2.00		Overcast
3/17/2015	64	66		0.00	2.00		Overcast
3/18/2015	67	68		0.30	2.30		Overcast, Light Rain
3/19/2015	65	68		0.00	2.30		Overcast
3/20/2015	68	73		0.00	2.30		Overcast
3/21/2015	66	68		3.00	5.30		Overcast, Storm
3/22/2015	65	68		0.00	5.30		Overcast,
3/23/2015	56	68	72	0.00	5.30		Clear
3/24/2015	58	72	78	0.00	5.30		Clear
3/25/2015	59	74	78	0.00	5.30		Clear
3/26/2015	64	68	71	0.00	5.30		Light Rain/Windy
3/27/2015	54	72	77	0.00	5.30		Clear
3/28/2015	59			0.00	5.30		Clear
3/28/2015	57	63		0.00	5.30		Clear
3/29/2015	59	73	78	0.00	5.30	15mph	Clear/Windy
3/30/2015	64	79		0.00	5.30		Partly Cloudy
3/31/2015	64	80		0.00	5.30		Partly Cloudy
4/1/2015	68	79		0.00	5.30		Partly Cloudy, Overcast
4/2/2015	68	78		0.00	5.30		Partly Cloudy, Overcast
4/3/2015	73	81		0.00	5.30		Overcast
4/4/2015	63	66		0.00	5.30		Cloudy
4/6/2015	69	75	81	0.00	5.30		Cloudy/Sunny
4/7/2015	73	82	84	0.00	5.30		Clear

Weather History
Summary Log, Grouped by Date

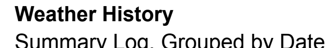
Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
4/8/2015	72	82	85	0.00	5.30	15mph	Clear
4/9/2015	73	84	86	0.00	5.30	15mph	Clear/, Partly Cloudy
4/10/2015	68	70		0.00	5.30	9mph	Partly Cloudy/Rain
4/11/2015	72	76	73	0.50	5.80	9mph	Overcast/rain late
4/12/2015	72	74	74	0.00	5.80		Partly Cloudy
4/13/2015	72	84		1.50	7.30		Morning: Thunderstorms Afternoon: Partly Sunny
4/14/2015	70	76		1.00	8.30		Morning: Cloudy, 10am Heavy Thunderstorms RAIN OUT
4/15/2015	60	64		0.00	8.30		Partly cloudy
4/16/2015	70	75		0.50	8.80		Partly cloudy/Thunderstorms in PM
4/17/2015	68	73		0.00	8.80		Partly cloudy
4/18/2015	71	75		3.75	12.55		Overcast
4/20/2015	64	71		0.00	12.55		Partly cloudy
4/21/2015	61	73		0.00	12.55		Clear
4/22/2015	70	81		0.00	12.55		Partly Cloudy
4/23/2015	70	84		0.00	12.55		Partly Cloudy, Overcast
4/24/2015	73	83		0.00	12.55		Partly Cloudy, Overcast 4:30PM - Light rain
4/25/2015	73	80		0.20	12.75		Overcast, scattered showers
4/27/2015	68	72		0.30	13.05		Partly Cloudy, Overcast
4/28/2015	64	70		0.30	13.35		Partly Cloudy, Overcast
4/29/2015	49	72		0.00	13.35		Partly Cloudy, Overcast
4/30/2015	52	75		0.00	13.35		Clear
5/1/2015	63	68		0.00	13.35		Clear
5/4/2015	73	79		0.00	13.35		Clear
5/5/2015	76	79	81	0.00	13.35	25mph	Overcast/windy
5/6/2015	74	81	83	0.00	13.35	15mph	Overcast/windy
5/7/2015	75	81	85	0.00	13.35	8mph	Clear/Light Wind
5/8/2015	78	83	87	0.00	13.35	10	Clear/Light Wind
5/9/2015	77	81		0.00	13.35	20mph	Overcast/windy
5/11/2015	74	77		0.00	13.35	20mph	Overcast/windy/rain
5/12/2015	70	72		1.75	15.10	5	Overcast/windy/rain
5/13/2015	70	82		4.00	19.10	5	Overcast/windy/
5/14/2015	70	82		0.00	19.10	5	Overcast/windy/
5/15/2015	70	79		0.00	27.10	5	Overcast/windy/
5/16/2015	72	82		0.00	27.10	5	Overcast/windy/
5/18/2015	73	80		3.75	30.85		Partly Cloudy
5/19/2015	75	80		0.00	30.85		Partly Cloudy, Overcast
5/20/2015	79	86		0.50	31.35		Partly Cloudy, Overcast, Rain
5/21/2015	76	83		0.20	31.55		Partly Cloudy, Overcast, Rain
5/22/2015	70	73		0.00	31.55		Partly Cloudy, Overcast
5/23/2015	76	82		0.00	31.55		Partly Cloudy, Overcast
5/26/2015	70	79	81	10.50	42.05	15mph	Overcast/ cloudy
5/27/2015	71	78	84	0.75	42.80	5mph	Rain early/, Clear

Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
5/28/2015	70	82	88	0.00	42.80	5mph	Clear
5/29/2015	76	83	87	0.50	43.30		Storms Early/Clear
5/30/2015	71	82		0.00	43.30		Clear
6/1/2015	70	73		0.00	43.30		Clear
6/2/2015	75	84		0.00	43.30		Clear
6/3/2015	76	88		0.00	43.30		Clear
6/4/2015	76	88		0.00	43.30		Clear
6/5/2015	78	91		0.00	43.30		Clear
6/6/2015	74	89		0.00	43.30		Clear
6/8/2015	74	92		0.00	43.30		Clear
6/8/2015	78	91		0.00	43.30		Clear
6/9/2015	78	85		0.16	43.46		Clear / slight rain
6/10/2015	78	89		0.00	43.46		Clear
6/11/2015	78	89		0.20	43.66		Clear/Scattered Showers
6/12/2015	78	91		0.10	43.76		Clear/Scattered Showers (pm)
6/13/2015	76	83		1.00	44.76		Rain
6/15/2015	78	81	86	3.50	48.26	10 mph	Rain with periods of sun
6/16/2015	77	79		2.75	51.01	45mph	WINDY& RAIN Tropical Storm
6/17/2015	79	81	89	1.50	52.51	25mph	WINDY& RAIN Tropical Storm
6/18/2015	78	84	89	1.25	53.76		Rain / Clear
6/19/2015	77	89	93	0.00	53.76		Clear
6/22/2015	77	88	92	0.00	53.76		Clear
6/23/2015	76	94	86	0.00	53.76		Clear
6/24/2015	77	93	88	0.00	53.76		Clear
6/25/2015	81	89	92	0.00	53.76		Clear
6/26/2015	81	89	92	0.00	53.76		Clear, slight shower
6/27/2015	77	91		0.00	53.76		Clear
6/29/2015	80	90	92	0.00	53.76		Overcast
6/30/2015	77	91		0.50	54.26		Overcast, Rain
7/1/2015	80	88		0.50	54.76		Overcast, Rain
7/2/2015	81	90		0.00	54.76		Overcast
7/3/2015	81	90		0.00	54.76		Overcast
7/6/2015	81	90		0.00	54.76		Clear
7/7/2015	82	94		0.00	55.26		Clear
7/8/2015	81	95		0.00	55.26		Clear/hot
7/9/2015	78	93		0.00	55.26		Clear/hot
7/10/2015	76	95		0.00	55.26		Clear/hot
7/11/2015	78	94		0.00	55.26		Clear/hot
7/13/2015	76	94		0.00	55.26		Partly Sunny
7/14/2015	79	90		0.00	55.26		Sunny
7/15/2015	79	93		0.00	55.26		Sunny
7/16/2015	80	94		0.00	55.26		Sunny
7/17/2015	80	93		0.24	55.50		Sunny, Scattered Shower
7/20/2015	79	95		0.24	55.74		Sunny,
7/21/2015	79	93		0.24	55.98		Sunny, scattered showers
7/22/2015	78	93		0.00	55.98		Sunny

Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
7/23/2015	78	95		0.00	55.98		Sunny
7/24/2015	77	95		0.04	56.02		Sunny and scattered showers
7/25/2015	79	97		0.00	56.02		Overcast
7/27/2015	80	93		0.00	56.02		Overcast
7/28/2015	82	91		0.00	56.02		Overcast
7/29/2015	82	91		0.00	56.02		Overcast
7/30/2015	81	97		0.00	56.02		Cloudy
7/31/2015	79	97		0.00	56.02		Cloudy
8/3/2015	80	96		0.00	56.02		Cloudy
8/4/2015	81	95		0.00	56.02		Cloudy
8/5/2015	80	95		0.00	56.02		Clear, slight pm shower
8/6/2015	82	99		0.00	56.02		Clear
8/7/2015	80	96		0.00	56.02		Clear
8/8/2015	79	97		0.00	56.02		Clear
8/10/2015	80	96		0.00	56.02		Clear
8/11/2015	83	103		0.00	56.02		Clear
8/12/2015	85	102		0.00	56.02		Clear
8/14/2015	78	101		0.00	56.02		Clear
8/17/2015	82	93		0.00	56.02		Overcast
8/18/2015	82	93		0.00	56.02		Overcast
8/19/2015	79	87		3.50	59.52		Overcast, Storm
8/20/2015	79	87		3.50	63.02		Overcast, Storm
8/21/2015	82	91		0.75	63.77		Overcast, Storm
8/22/2015	84	92		0.75	64.52		Overcast, Storm
8/24/2015	84	93		0.00	64.52		Overcast
8/26/2015	84	93		0.50	65.02		Overcast, Storm in PM
8/27/2015	85	93		0.00	65.02		Partly Cloudy
8/28/2015	73	89		0.00	65.02		Partly Cloudy
8/29/2015	73	89		0.00	65.02		Partly Cloudy
8/31/2015	87	93		0.00	65.02		Partly Cloudy
9/1/2015	74	85		0.75	65.77		Storm AM Overcast Pm
9/2/2015	74	85		0.75	66.52		Storm AM Overcast Pm
9/3/2015	84	91		0.00	66.52		Overcast
9/4/2015	85	90		0.00	66.52		Overcast
9/5/2015	70	89		0.75	67.27		Partly Cloudy
9/7/2015	85	90		0.00	67.27		Overcast
9/8/2015	85	90		0.00	67.27		Overcast
9/9/2015	88	92		0.00	67.27		Overcast
9/10/2015	88	92		0.75	68.02		Overcast, Storm
9/11/2015	75	83		0.00	68.02		
9/14/2015	75	83		0.00	68.02		
9/15/2015	76	87		0.00	68.02		
9/16/2015	76	88		0.00	68.02		
9/17/2015	70	91		0.00	68.02		



Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
9/21/2015	68	91		0.00	68.02		
9/22/2015	68	91		0.00	68.02		Partly Cloudy
9/23/2015	73	89		0.00	68.02		Clear
9/24/2015	75	90		0.00	68.02		Clear
9/25/2015	79	89		0.00	68.02		Clear
9/26/2015	74	89		0.00	68.02		Clear
9/29/2015	79	89		0.00	68.02		Clear
9/30/2015	79	88		0.00	68.02		Clear
10/1/2015	65	87		0.00	68.02		Clear
10/5/2015	69	82		0.00	68.02		Clear
10/6/2015	70	86		0.00	68.02		Clear
10/7/2015	73	83		0.00	68.02		Clear
10/8/2015	74	83		0.00	68.02		Clear
10/9/2015	74	87		0.00	68.02		Clear
10/10/2015	74	87		0.00	68.02		Clear
10/12/2015	75	88		0.00	68.02		Clear
10/13/2015	67	91		0.00	68.02		Clear
10/14/2015	70	89		0.00	68.02		Clear
10/15/2015	68	90		0.00	68.02		Clear
10/16/2015	66	90		0.00	68.02		Clear
10/19/2015	70	85		0.00	68.02		Clear
10/20/2015	72	86		0.30	68.32		Overcast
10/21/2015	72	86		0.00	68.32		Overcast
10/22/2015	74	88		0.00	68.32		Overcast
10/23/2015	70	84		0.00	68.32		Overcast
10/24/2015	72	86		0.05	68.37		Overcast, Rain
10/26/2015	72	86		0.05	68.42		Overcast
10/27/2015	72	86		0.05	68.47		Overcast

AERIAL PHOTOS

727.520.8181
www.aerophoto.com

Mariposa at Pecan Park

Image # 140722 6212
Date 07.22.14

727.520.8181
www.aerophoto.com

Mariposa at Pecan Park

Image # 150127 6318
Date 01.27.15

727.520.8181
www.aerophoto.com

Mariposa at Pecan Park

Image # 150219 6244
Date 02.19.15

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Mariposa at Pecan Park

Image # 150323 6100
Date 03.23.15

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Mariposa at Pecan Park

Image # 150424 6166
Date 04.24.15

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Mariposa at Pecan Park

Image # 150723 6075
Date 07.23.15

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Mariposa at Pecan Park

Image # 150925 6085
Date 09.25.15

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Mariposa at Elk Drive (HTC # 13145)

RECOMMENDED ACTION

WHEREAS, Mariposa Elk Drive LP (the "Development Owner") was allocated $1,395,438 in 9% Housing Tax Credits in 2013 to construct Mariposa at Elk Drive (the "Development"), a development consisting of 180 new multifamily units in Burleson;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2015, and required by Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the 2-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued, and the notice was amended on Friday, June 5, 2015 and on Tuesday, June 9, 2015, to include Johnson County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms impacted construction crews on the Development during the construction phase and delayed construction progress, which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a three-month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units, the requested changes do not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a three month extension of the placed in service deadline is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Mariposa at Elk Drive was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 180-unit, elderly, new construction property located in Burleson in Johnson County. The Owner, Mariposa Elk Drive LP and its General Partner, Mariposa Elk Drive General Partner LLC, are ultimately owned and managed by Laura Leshikar and Stuart Shaw.

On October 28, 2015, the Owner submitted a letter dated October 27, 2015 to the Department, requesting a three-month extension to the date that the Owner is required to place each building and unit in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement, respectively. The Owner is seeking the relief under IRS Revenue Procedure 2007-54 (superseded and modified by IRS Revenue Procedure 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

The construction contract dated September 1, 2014 projected a 435-day (approximately 14 months) construction duration with commencement on September 1, 2014 and substantial completion on November 9, 2015. However, according to the Owner, there were over 54 days of documented rain days, which translates to over 100 days of lost productivity on the job site. The Owner indicated that rain prevented the completion of site work, paving and slabs, which were critical for construction completion. Framing began later than expected and significant progress was also prevented by rain. The Owner also pointed out that once the rain slowed, work in the region overlapped and this placed a strain on the workforce. The rain also delayed the grading work at the development site, which prevented the Owner from submitting the request for a Letter of Map Revision ("LOMR") to FEMA. The City of Burleson requires that the LOMR be in place before certificates of occupancy can be issued for the two buildings in the reclaimed flood plain. The LOMR was requested in June of 2015 and is expected to be issued by December of 2015. The Owner is hopeful that the December 31, 2015 placement in service deadline can be met but is requesting this extension now to avoid a possible emergency request in December.

The most recent construction progress report, dated October 8, 2015, from CA Partners, Inc. states that the updated and revised construction schedule as of April 28, 2015 indicates a substantial completion date of November 26, 2015, but based on the observations of the inspector, the completion dates appear to be aggressive at the current stage of construction. CA Partners, Inc. anticipates a final completion date in mid December 2015 to be more reasonable.

The Owner has submitted evidence that Johnson County is included in the area that is eligible for individual and public assistance. Staff verified that the FEMA Notices of Major Disaster Declaration released on May 29, 2015, as well as the amended notices released on June 5, 2015, and June 9, 2015, confirm the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015, and continuing under the

authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The amended notices released on June 5, 2015, and June 9, 2015, included Johnson County as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Procedure for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by a Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The agency's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610 due to the IRS on February 28th.

The Owner has indicated that they are making all efforts to still meet the current deadline. Staff is recommending a three month extension.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline, and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request, as presented herein.

BONNER CARRINGTON

TO: ROSALIO BANUELOS - TDHCA

FROM: STUART SHAW

REGARDING: MARIPOSA APARTMENT HOMES AT ELK DRIVE
TDHCA #13145
PLACED IN SERVICE DATE EXTENSION REQUEST

DATE: OCTOBER 27, 2015

Dear Mr. Banuelos,

I am sending you the following request on behalf of the owner of Mariposa Apartment Homes at Elk Drive (MED), TDHCA #13145, located in Burleson, Johnson County, Texas. MED is located in the federally declared disaster area (FEMA-4223-DR, Texas Disaster Declaration) which allows relief, among many other forms of assistance, to the placed in service (PIS) deadline for affordable housing communities affected by the disaster.

In May, Governor Greg Abbott requested a major disaster declaration due to severe storms, tornadoes, straight-line winds, and flooding. The federal government granted the request and declared the areas on the attached map as part of a federally declared disaster area. Johnson County is included in the area that is eligible for individual and public assistance. MED has experienced construction delays as a result of these storms and is in need of assistance.

To date, MED has experienced over 54 days of documented rain days (see attached) which translates into over 100 days of lost productivity on the job site. The rain prevented the completion of site work, paving and slabs, all of which were on the critical path for completion of MED. The attached aerial photos detail progress made during the spring and leading into the summer months. Once framing began in the spring, which was much later than expected, rain delays continued and prevented significant progress. While there were localized delays as a result of rain at MED, subcontractors working in the area also experienced delays. The extraordinary rains caused existing work in the region to overlap and subcontractors were prevented from staging their work. Once the rains slowed, subcontractors found themselves with jobs that were now competing for workers and time which put a tremendous strain on the workforce. MED has been able to maintain onsite workers, but not at the levels needed to completely overcome the delays caused by the rains. Finally, the rains prevented completion of site work and, in return, submission of a Letter of Map Revision (LOMR) to FEMA. The City of Burleson requires that the LOMR be in place before Certificates of Occupancy can be issued for buildings in the reclaimed flood plain. The LOMR submission was delayed because of the inability to complete site work due to muddy conditions. The LOMR request was submitted in June and is currently being processed with an outside date of approval of December 2015 (see attached correspondence). While we expect the LOMR in November, delays associated with the flooding in the region could delay processing by FEMA.

The general contractor has been working diligently with subcontractors to keep the project on schedule and is still working to meet the December 31, 2015 PIS deadline. We take great pride in meeting the PIS deadline and are actively managing the schedule to meet the original PIS deadline. We are hopeful that the the original PIS deadline can be met, but given the extenuating circumstances and extraordinary rain that has occurred at MED we need to plan for the worst case scenario.

In order to avoid an emergency request to the TDHCA in December the MED team respectfully requests an extension to the PIS deadline until March 31, 2016 for MED in accordance with the allowances provided by the federally declared disaster area. If you have any questions, please contact Casey Bump in my office at 512-220-9902.

Sincerely,

Stuart Shaw
Owner's Representative

Attachments

amam - 10/28/2015 5:39pm - RB

FEMA-4223-DR, Texas Disaster Declaration as of 08/05/2015

FEMA

Data Layer/Map Description:
The types of assistance that have been designated for selected areas in the State of Texas.

All areas in the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

Designated Counties

- No Designation
- Individual Assistance
- Public Assistance
- Individual Assistance and Public Assistance

0 40 80 120 160 Miles

Data Sources:
FEMA, ESRI;
Initial Declaration: 05/29/2015
Disaster Federal Registry Notice:
Amendment #12 - 08/05/2015
Datum: North American 1983
Projection: Lambert Conformal Conic

MapID 571e20c7ecb0805151107hqprod

RAIN LOGS

Date	MED BURLESON CONSTRUCTION LOG	Site Conditions	Personnel	Temp	Rain
9/2/2014	survey to stake property lines. Got with gas company on easement restrictions. Co-op about posible temp power			78*-96*	
9/3/2014	Silt fence install. get bids on stripers and temp fence pricing			77*-97*	
9/4/2014	Continue silt fence install. order rock for entrances through erosion sub.			75*-97*	
9/5/2014	Finish silt fence. worked on entrances via survey and erosion sub. Talked to oncor on site to establish where power would be sourced from			73*-96*	
9/8/2014	Met with striper on jobsite for bid on Elk Dr striping of lanes per city before work was to be done!	Damp Sunny		73*-95*	.10"
9/9/2014	Rock entrance instalation				
9/10/2014	Find pricing for mobile offfice, dumpster, portable restrooms.				
9/11/2014	Fence istallation				
9/12/2014	Fence istallation, paid for permits and recieved the stamped prints from city.				
9/15/2014	Maintain upkeep of jobsite. Got with Cain to insure we get more fence on site.				
9/16/2014	contacted Cain and scheduled fence crew to come back out.	Sunny			
9/17/2014	Austin Trip	Sunny			
9/18/2014	navigate Smartsheet and training	Sunny			
9/19/2014	Heavy equipment delivered for dirt work.	Mist to partly cloudy	4	68-84	
9/22/2014	Site clearing began. On site soil samples taken. Talked to Midtream.	Nice and sunny	6	74-88	
9/23/2014	Site clearing continued. Co-Op meeting for temp power. Job office delivered. Met with Noe from Big Star.	sunny and dry	12	54-84	
9/24/2014	Continued site clearing. Met with loval vendors. Terracon meeting. Sanco erosion control check	sunny and dry	14	60-88	
9/25/2014	Exporting site spoils. Prep for front entrance. Cleaned site. Furniture arrived.	sunny and dry	16	62-88	
9/26/2014	Proof rolled building pads. finshed temp front entrance.	sunny and dry	16	62-90	
9/29/2014	Building pad site at building 1 . Cleaned up around jobsite. More testing to be done with terracon.	sunny and dry	12	64-90	
9/30/3014	Density testing for pad sites. Common brought in for for non structural areas. Medical cabinet replenished	sunny and dry	17	67-95	
10/1/2014	Density testing for pad sites. Common brought in for for non structural areas. Survey for pavement grades.	sunny and dry	20	75-94	
10/2/2014	Common fill for landscape area. Met with vendors for open top dumpsters. Waiting on select.	sunny/Rain late	18	75-95	
10/3/2014	Importing dirt for landscape. Terracon tests for building 1 pad failed for select fill. Bringing in a roller on Saturday.	sunny	20	55-84	
10/4/2014	Sheep foot rolled building 1 pad. Met with Terracon. Ready for select fill Monday.	sunny	3	60-84	
10/6/2014	Moisture and Density passed for pads 1 and 2. Cutting in pavement. Importing select fill.	sunny	18	75-87	
10/7/2014	Finishing select fill for pad 1 & 2. General fill for pad 3.	sunny	18	75-95	
10/8/2014	Rough grade for pavement. Terracon doing densities for lifts. United Co-op started hand digging for pole locations. Swpps inpection passed.	sunny	18	75-90	
10/9/2014	Pads 1 and 2 need cutting for exact elevations. Power poles set by Co-Op. After density test in the morning, select fill to begin on pad 3.	sunny	16	76-93	
10/10/2014	First lift for select fill passed density test. Rough grade on street contiued. Common fill imported.	sunny	16	76-93	
10/13/2014	Rained out. Called Cain to reinforce wind screen.	cool and muddy, very windy	4	60	1.5
10/14/2014	Rolled building pad 4. Passed density. Ready for first lift. Ground is dryed. Common for lifts will be here tomorrow.	sunny, windy, cool	4	50-76	
10/15/2014	Continued grading. Common fill has yet to be brought in this week due to wetness at the source site.	sunny, dry	7	50-78	
10/16/2014	Buildind 1 ready for blue tops. Continueing lifts for building 4. Rumsey began mobilizing for utlities. Survey for utlities. Common fill imported.	sunny, dry	16	55-87	
10/17/2014	Lifts for building four continued. Blue tops for building one.	sunny and dry	25	60-85	
10/20/2014	Lifts for building 4. Batter boards for building 1,2,3. Utilities for sewer dug.	sunny and dry	30	60-85	
10/21/2014	Lifts for building four continued. Select fill to begin tomorrow. Met with Randy and Jade concerning wages. Utilies for sewage being put in.	sunny and dry	21	60-80	
10/22/2014	Utilities continued, grading cont., last of common fill imported. Select to begin Friday. Survey buildings 1-3. Swept easement due to track out..	sunny and dry	18	62-80	
10/23/2014	Survey, Batter boards, utilities. Utilities inspection passed! began back fill.	sunny and dry	14	65-80	
10/24/2014	Batter boards for buliding 3. Back fill continued. Waiting for select fill on Monday.	sunny and dry	10	65-85	

Date	MED BURLESON CONSTRUCTION LOG	Site Conditions	Personnel	Temp	Rain
10/28/2014	Select fill grading for building 4.	sunny and dry	5	65-85	
10/29/2014	Blue top for pad 4. Utilities continued.	sunny and dry	10	65-79	
10/30/2014	Utlities continued. Plumbing suplies dropped off.	sunny and dry	10	65-78	
10/31/2014	Utilities continued. Prefab for plumbing	sunny and dry	12	55-67	
11/3/2014	Finished setting manholes. Plan desrepancies. Laying waterlines.	sunny and dry	10	52-70	
11/4/2014	Water line inpection (passed). Backfill on lines. More waterlines to be completed. Sign installed.	rain @10 am 1"	10	50 -70	1
11/5/2014	Rained out.	Rained 1 1/2" Muddy	4	55	0.5
11/6/2014	Water line continued to be laid.	muddy, sunny	5	48-68	
11/7/2014	Water line continued to be laid.	muddy,sunny	5	37-67	
11/10/2014	Survey for clubhouse and storm. Plumbers marked lines for pad 2. Water lines continue passing inspection at service.	Little wet, sunny	15	50-82	
11/11/2014	Continued survey for storm. Plumber marked lines for pad 1. Temp power pole installed. Imported fill.	Cold, dry, windy	16	40-48	
11/12/2014	Storm utilities continued. Plumbers marking pad 1. Temp pole passed inspection. Temp pole scheduled.	very cold, dry, windy	13	30-43	
11/13/2014	Storm continued. Plumber begin rough in for pad 1. United Co-Op installed elect. meter.	Cold, dry, windy	16	29-38	
11/14/2014	Storm continued. Plumber begin rough in for pad 1. Precon with ATT.	Cold, dry, windy	17	30-45	
11/17/2014	Storm continued. Pad 1 rough for plumbing.	cold, dry	15	25-38	
11/18/2014	Storm continued. Pad 1 rough for plumbing. Inspection called for wed.	cold, dry	15	27-38	
11/19/2014	Storm continued. Pad 1 rough in plumbing. Met with rumsey grading foreman. Grading to start Thurs.	cold and dry	17	36-55	
11/20/2014	Storm continued. Pad 1 rough in plumbing.	warm and dry	16	43-70	
11/21/2014	Storm continued. Pad 1 rough in plumbing. Meet with S&S. Trench for T poles	cloudy, dry	12	60-70	
11/22/2014	lay water line to tie in to city. Work on Hydrants for Elk Dr. Digging plumbing on pad 1	sunny, wet 1 1/2" of rain over the weekend	13	40-65	0.5
11/23/2014	Connecting to the city sewage. Digging on pad 3 for water lines. Digging manhole.	wet	15	35-60	
11/24/2014	Tied into to city sewage. Manhole set. Backfill comenced.	Wet	13	41-64	
12/1/2014	Imported dirt for pavement. Plumbing finishing rough for pad 1. Inspection called for tomorrow.	semi-dry/cold	23	36-39	
12/2/2014	Still didn't get plumbing inspection for Pad. Continued plumbing on Pad 1C. Tieing in valve for city water.	semi dry	23	45-60	
12/3/2014	Partial plumbing inspection passed for pad 1A . Backfill began. Forms to start Monday and Pad 1. Lifts for east side of property for paving.	semi dry	23	55-62	
12/4/2014	Lifts continue for paving. Rough grading complete for pavement. Survey to stake utliteis and grading. Backfill continued for plumbing.	damp	25	55-65	
12/5/2014	Utilities continued. Rough in plumbing for building 2.	less than 1/4" rain	15	64-74	
12/8/2014	Utilities continued at west side of site. Passed plumb inspection 1A.Started setting forms on building 1.	dry	24	41-65	
12/9/2014	Utilities continued at west side of site. Forms continued to the clubhouse. plumbers rough Pad 3.	foggy, moist	26	39-64	
12/10/2014	Utilities continued. Pad 1 has passed all rough in plumbing and proceeded to build 2,3	foggy, moist	26	38-62	
12/11/2014	utilities and service line being installed at build 4. plumbing rough continued to build 3,	cloudy, damp	26	52-65	
12/12/2014	Utilities continued North property. Plumbing inspection. Pumbing for building 3.	dry	26	57-70	
12/15/2014	Pad 4 survey for corners. Plumber pulled stringlines bldg 4. forms continued to building 2. Digging for rough on bldg 4.	dry	23	42-60	
12/16/2014	Rough in plumbing for bldg 4. trenching for beams on bldg 1 Utilities continued on South property.	dry	24	45-61	
12/17/2014	Survey for front entrance. Plumbing rough on bldg 4. Trenched bldg 1A. and dug pit for elevator.	rain 1"	24	45-48	1
12/18/2014	Site too wet to work on. Worked on culvert on Elk Dr..	wet	5	45-52	
12/19/2014	Elevator inspection. Scheduled to pour Monday. Worked on culvert on Elk Dr.	wet,rain 1/2"	16	45-50	0.5
12/22/2014	Poured for elevator base. Domestic line continued for utlities. Pest control	wet	22	45-62	
12/23/2014	Rain, Cable delivered for pour on Monday. Met with S&S concrete.	1"	7	42-45	1
12/24/2014	Forms continued. Cable laid for pad 1a. plumbing continued pad 4.	wet	12	42-55	

Date	MED BURLESON CONSTRUCTION LOG	Site Conditions	Personnel	Temp	Rain
12/29/2014	Inspections for manholes, pad 1A prepour (elect.,cable, plumbing). Pour will occur at 5 a.m. tomorrow.	wet	32	31-62	
12/30/2014	Forms continued in building 2.	wet	14	42-50	
12/31/2014		wet	16	31-22	
1/1/2015	Happy New Years	wet			
1/2/2015	Rain	wet 1'			1
1/5/2015	Inpected for second pour on building 1. Retested chlorine in domestic lines.	wet	17	24-46	
1/6/2015	Poured concrete on Building 1b. Continued forms on Building 2.	wet	32	38-52	
1/7/2015	Forms continued for building 2. Grading for pavement began on the east side of property.	wet	15	34-34	
1/8/2015	Forms continued for building 2. Grading for pavement began on the east side of property.	wet	18	27-34	
1/9/2015	Building 3 forms began. Dig for elevator. Grading subgrade and dirt imported. Sleeves dug.	dry	21	27-33	
1/12/2015	Forms for building 3 continued. Fence to be relocated.	wet 3/4" of rain over the week end	9	41-42	
1/13/2015	Forms for building 3 continued. Grading entrance for building 2 concrete pour tomorrow a 2 a.m.	wet	16	31-36	
1/14/2015	Poured concrete on building 2. Grading contiued.	wet	52	35-41	
1/15/2015	Setting forms on building 3. Grading for pavement continued. Survey for grading.	wet	23	36-55	
1/16/2015	Setting forms on building 3. Grading for pavement continued. Survey for grading. Trenching for pour.	wet	23	34-55	
1/19/2015	Poured concrete on building 1b. Grading continued.	damp	44	34-64	
1/20/2015	Grading for pavement. Forms on building 1. Lime tomorrow. Flood plain work.	dry	22	28-70	
1/21/2015	Mixing lime for pavement. Trenching for pour for Building 1C. Backfill fire risors.	dry	34	43-59	
1/22/2015	Rained out.	wet 3/4" rain	3	46-39	0.75
1/23/2015	Laying cables for pad 1C. To be poured next tuesday.	Wet	15	42-48	
1/26/2015	Trenching continued for 1C. Cables laid and pad inspected. Grading for pavement.	wet	23	45-68	
1/27/2015	Poured concrete. Grading for pavement. Forms for Building 3.	dry	24	44-68	
1/28/2015	Grading for pavement. Forms for Building 3. Cables for Building fixed.	dry	24	62-81	
1/29/2015	Test Grading for pavement. Forms for building 3.				
1/30/2015	Poured concrete on building 3 pour 1. Grading continued.				
2/2/2015	rained out	wet	0	24-45	0.5
2/3/2015	Set forms for paving. Forms on building 4. Trenching on 3. Cable stressing.	wet	3	34-54	
2/4/2015	Contiued forms for paving. Forms for building 4 contiued. Pumping water.	wet	4	34-56	
2/5/2015	Continued forms for paving. Forms for building 4. Pumping water.	wet	2	24-50	
2/6/2015	Poured 660yds of paving at construction entrance. Grading continued.	wet	2	34-55	
2/9/2015	Grading and trenching contiued at building 3. Forms on building 4	dry	2	42-72	
2/10/2015	Forms continued building 4.	dry	2	45-70	
2/11/2015	trenched building 4. stressing cables.	dry	2	42-72	
2/12/2015	poured build 3b. passed inspection on building 4	dry	3	42-72	
2/13/2015	poured building 4a. fixed some broken sleeves.	dry	3	42-76	
2/16/2015	Lime and grade pavement.	wet	2	30-36	.50"
2/17/2015	lime continued. Grading for pavement continued.	damp	2	28-55	
2/18/2015	Lime at fire lane Bldg 3 & entry- plumbing repair bldg 1- bake fill curbs by concrete	sunny	18		
2/19/2015	Lime at paving-utility repair inlet-set forms at Maint & garages-plumbing repairs bldg 1 - Survey reset staking @ paving and Garages	sunny	24	62*	
2/20/2015	Grading and mixing lime. Fence installation. Compaction. Security prep. Light poles.	Sunny	2	66*	
2/23/2015	No work due to weather	Ice	2	24*	
2/24/2015	No work due to weather	Ice/refreeze	2	30*	
2/25/2015	Work began at 11am-dewater bldg 4 for pour on Fri- Elect working temp lighting.	wet/mud/sun	6		.75"
2/26/2015	S&S dewater bldg 4 and Rumsey Bldg 1 paving- meeting with S&S and Rumsey on forward progress on completion.	mud/snow/wchill	4	36*-38*	
2/27/2015	No work due to weather	snow 2-4"			.50"

Date	MED BURLESON CONSTRUCTION LOG	Site Conditions	Personnel	Temp	Rain
3/2/2015	S&S dewater bldg 4- tie steel for paving, Rumsey working dewater at Bld1	mud/.25 overnight rain	8	35*-39*	.25"
3/3/2015	S&S dewater bldg 4- tie steel for paving, Rumsey working dewater at Bld1	/Mud	23	40*-54*	
3/4/2015	No work due to weather- delivery of window tape & primer	Rain/Cold	4	40*-38*	1"
3/5/2015	No work due to weather	freezing/sun	2	22*-38*	.35"
3/6/2015	S&S concrete dewater bldg 4 & paving, garages- Survey for cut at back of property	sun	12	29*-52*	
3/7/2015	S&S Concrete dewater bld 4 and install cable ready for in spection on Monday	sun/over cast in PM	17	43*-64*	
3/9/2015	No work due to overnight .25" of rain!!! -	Rain all day	2	46*-62*	.70"
3/10/2015	S&S Dewater and lime Bldg 4 and paving for pour-Rumsey worked 1/2 day on new drainage elevations	Overcast al day	21	50*-60*	
3/11/2015	S&S Prep Bldg 4 for inspections and pour Fri./ Lime at paving and Maint/Garages for pour on Sat	Fog/cloudy/ Lt sun	24	48*-68*	
	TRANSITION TO PROLOG				

BONNER CARRINGTON
Construction

Weather History

Summary Log, Grouped by Date

Mariposa Elk Drive
155 Elk Drive
Burleson, TX 76028

Project # 13-1855
Tel: (512) 970-9486 Fax: (512) 377-1651

Mariposa Elk Drive LP

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
3/6/2015	29	52		0.00	0.00		Sun
3/7/2015	29	52		0.00	0.00		Sun,
3/11/2015	42	65		0.12	0.12		Overcast, Clear
3/12/2015	50*	68*		0.00	0.12		AM Clouds/ PM Sun
3/13/2015	54*	64*		0.12	0.24	14 to 20 gust	Cloudy all day, Light Rain
3/16/2015	59*	81*		0.00	0.24	14 to 20 gust	Clear/sun
3/17/2015	58*	68*		0.00	0.24		AM , Overcast PM Sun
3/18/2015	58*	68*		0.00	0.24		AM , Overcast PM Sun
3/19/2015	61*	76*		0.00	0.24		AM , Overcast PM Sun
3/20/2015	55*	53*		0.00	0.24		AM rain PM rain
3/23/2015	57*	77*		0.75	0.99		Clear
3/24/2015	59*	83*		0.00	0.99		Clear
3/25/2015	59*	83*		0.00	0.99		Clear
3/26/2015	59*	83*		0.01	1.00	15-25	Clear/, Windy Storm Wed night, light hail, blowing rain.
3/27/2015	46*	72*		0.00	1.00	5-10	Clear/, Windy
3/30/2015	64*	80*		0.00	1.00	3-8	Mostly Cloudy
3/31/2015	64*	85*		0.00	1.00	3-8	Clear
4/1/2015	64*	81*		0.00	1.00	3-8	Overcast/chance of rain over night
4/2/2015	68*	86*		0.00	1.00	3-8	Partly Cloudy
4/3/2015	56*	76*		0.00	1.00	3-8	Partly Cloudy
4/6/2015	67*	85*		0.75	1.75	3-8	Partly Cloudy .75 rain over weekend
4/7/2015	70*	84*		0.75	2.50	3-8	Overcast
4/8/2015	67*	77*		0.25	2.75	15-25	Overcast/, Rain .25 Rain/mud More rain expected tomorrow
4/9/2015	68*	85*		0.00	2.75	15-25	Overcast/, Clear Rain expected overnight
4/10/2015	52*	71*		0.00	2.75	15-25	Overcast/, Clear Rain expected overnight
4/13/2015	58*	74*		0.10	2.85	15-25	Overcast, Light Rain
4/14/2015	56*	62*		0.00	2.85	15-25	Partly Cloudy/cool
4/15/2015	58*	78*		0.00	2.85		Clear
4/16/2015	63*	75*		0.00	2.85		Overcast/ 100% RAIN EXPECTED OVER NIGHT
4/17/2015	63*	75*		0.00	2.85		Overcast/ 50% chance of rain
4/20/2015	63*	75*		1.75	4.60		Overcast 40% chance of rain
4/21/2015	63*	75*		0.00	4.60		30% rain in the morning, Overcast

Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
4/22/2015	63*	75*		0.00	4.60		30% rain in the morning, Overcast
4/23/2015	63*	75*		0.00	4.60		30% rain in the morning, Overcast
4/24/2015	51*	71*		1.25	5.85		Overcast 100% chance of rain in the afternoon.
4/27/2015	51*	71*		1.25	7.10		Overcast 100% chance of rain in the afternoon. Rain Day
4/28/2015	46*	54*		0.60	7.70		Light Rain all day. Rain day
4/29/2015	49*	77*		0.00	7.70		cool. mud day
4/30/2015	49*	77*		0.00	7.70		cool. mud day
5/1/2015	51*	82*		0.00	7.70		Clear Still have Mud day
5/4/2015	66*	84*		0.00	7.70	5-10	Clear
5/5/2015	51*	82*		0.00	7.70		Clear Still have Mud day
5/6/2015	67*	83*		0.25	7.95		Partly Cloudy .25 rain over night
5/7/2015	67*	83*		1.25	9.20		Partly Cloudy 60% chance of rain tonight, Light Rain today in the am Mud Day
5/8/2015	67*	83*		0.00	9.20		Partly Cloudy 60% chance of rain tonight, Light Rain today in the am Mud Day 4.0 earthquake
5/11/2015	59*	73*		3.25	12.45		Partly Cloudy/Clear 3.25 in. of rain over the weekend Mud Day/water standing at bldgs
5/12/2015	60	73*		0.15	12.60		Rain Mud Day/water standing at bldgs
5/13/2015	60	73*		0.15	12.75		Rain Mud Day/water standing at bldgs
5/14/2015	60	73*		0.75	13.50		Rain Mud Day/water standing at bldgs
5/15/2015	70*	79*		0.00	13.50		Mud Day/water standing at bldgs ,, Partly Cloudy
5/18/2015	65*	89*		1.75	15.25		Rain over the weekend 1.75 Mud Day/water standing at bldgs
5/19/2015	70*	80*		0.00	15.25		Rain in the afternoon Mud Day/water standing at bldgs
5/20/2015	69*	86*		0.60	15.85		Clear Mud Day/water standing at bldgs
5/21/2015	54	56	60	1.00	16.85		Rain
5/22/2015	60*		72*	0.25	17.10		Light Rain Rain and flooding expected over the weekend .25 rain through out the day,
5/25/2015	63*		78*	3.25	20.35		Heavy rain at 2pm Rain and flooding expected through out the day
5/26/2015	66*		78*	0.25	20.60		.25" of rain over night Overcast

Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
5/27/2015	60*		83*	0.35	20.95		.35" of rain overnight Clear Rain expected overnight
5/28/2015	68*		81*	0.00	20.95		Clear 100% Rain expected overnight
5/29/2015	68*		81*	3.50	24.45		3.50 in of rain overnight 100% Rain expected overnight, Overcast
6/1/2015	57*		87*	0.50	24.95		Clear ,50" over the weekend
6/2/2015	66*		90*	0.00	24.95		Clear
6/3/2015	79*		90*	0.00	24.95		Clear
6/4/2015	68*		91*	0.00	24.95		Clear
6/5/2015	68*		91*	0.00	24.95		Clear
6/8/2015	70*		95*	0.00	24.95		Clear, Overcast
6/9/2015	71*		98*	0.00	24.95		Clear,
6/10/2015	71*		98*	0.00	24.95		Clear,
6/11/2015	73*		93*	0.00	24.95		Clear,
6/12/2015	73*		93*	0.00	24.95		Clear, 20% chance of rain through the night
6/15/2015	73*		93*	0.00	24.95		Overcast 30% chance of rain through the night 80% tomorrow,
6/16/2015	73*		93*	0.00	24.95		Light Rain off and on all day 7in of rain expected
6/17/2015	72*		79*	3.50	28.45		Storm all day
6/18/2015	72*		95*	0.00	28.45		Clear
6/19/2015	73*		93*	0.00	28.45		Clear
6/22/2015	70*		93*	0.00	28.45		Clear
6/23/2015	72*		94*	0.00	28.45		Clear
6/24/2015	70*		93*	0.00	28.45		Clear
6/25/2015	73*		95*	0.00	28.45		Clear
6/26/2015	72*		95*	0.00	28.45		Clear
6/29/2015	73*		96*	1.00	29.45		Clear
6/30/2015	72*		95*	0.50	29.95		Clear
7/1/2015	73*		96*	0.50	30.45		Clear
7/2/2015	71*		92*	0.00	30.45		Clear
7/3/2015	76*		93*	0.00	30.45		Clear
7/6/2015	76*		92*	0.00	30.45		Clear
7/7/2015	76*		88*	0.00	30.45		, Overcast rain expected over night
7/8/2015	74*		88*	0.00	30.45		overcast/, Light Rain
7/9/2015	71*		92*	0.00	30.45		Clear
7/10/2015	72*		93*	0.00	30.45		Clear
7/13/2015	76*		99*	0.00	30.45		Clear
7/14/2015	76*		99*	0.00	30.45		Clear
7/15/2015	76*		99*	0.00	30.45		Clear
7/16/2015	75*		97*	0.00	30.45		Clear
7/17/2015	76*		97*	0.00	30.45		Clear
7/20/2015	76*		99*	0.00	30.45		Clear

Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
7/21/2015	77*		106*	0.00	30.45		Clear
7/22/2015	77*		99*	0.00	30.45		Clear
7/24/2015	81*		100	0.00	30.45		Clear
7/27/2015	81*		100	0.00	30.45		Clear
7/28/2015	78*		102	0.00	30.45		Clear
7/29/2015	78*		102	0.00	30.45		Clear
7/30/2015	78*		102	0.00	30.45		Clear
7/31/2015	78*		102	0.00	30.45		Clear
8/3/2015	78*		102	0.00	30.45		Clear
8/4/2015	78*		102	0.00	30.45		Clear
8/5/2015	78*		103	0.00	30.45		Clear
8/6/2015	78*		103	0.00	30.45		Clear
8/7/2015	78*		103	0.00	30.45		Clear
8/10/2015	73*		105*	0.00	30.45		Clear
8/11/2015	73*		105*	0.00	30.45		Clear
8/12/2015	75*		100*	0.00	30.45		Clear
8/13/2015	73*		100*	0.00	30.45		Clear
8/14/2015	75*		102*	0.00	30.45		Clear
8/17/2015	75*		102*	0.00	30.45		Clear
8/18/2015	77*		98*	0.00	30.45		Clear
8/19/2015	67*		96*	0.00	30.45		Clear
8/20/2015	67*		96*	0.00	30.45		Light Rain
8/21/2015	67*		96*	0.00	30.45		Light Rain
8/24/2015	71*		93*	0.25	30.70		Light Rain
8/25/2015	71*		93*	0.25	30.95		Overcast
8/26/2015	76*		95*	0.25	31.20		Clear
8/27/2015	76*		95*	0.25	31.45		Clear
8/31/2015	72*		95*	0.00	31.45		Clear
9/1/2015	70*		95*	0.00	31.45		Clear
9/2/2015	71*		94*	0.00	31.45		Clear
9/3/2015	74*		95*	0.00	31.45		Clear
9/4/2015	74*		95*	0.00	31.45		Clear
9/7/2015	74*		95*	0.00	31.45		Clear
9/8/2015	78*		99*	0.00	31.45		Clear
9/9/2015	74*		95*	1.25	32.70		Overcast Rain overnight 1.25
9/10/2015	70*		92*	0.00	32.70		Clear
9/11/2015	67*		94*	0.00	32.70		Clear
9/14/2015	64*		90*	0.00	32.70		Clear
9/15/2015	72*		88*	0.00	32.70		Clear
9/16/2015	72*		88*	0.00	32.70		Clear
9/17/2015	72*		88*	0.00	32.70		Clear
9/18/2015	72*		88*	0.00	32.70		Clear
9/21/2015	72*		88*	0.00	32.70		Clear
9/22/2015	72*		88*	0.00	32.70		Clear
9/23/2015	72*		88*	0.00	32.70		Clear
9/24/2015	72*		88*	0.00	32.70		Clear

Weather History
Summary Log, Grouped by Date

Date	Temp 1	Temp 2	Temp 3	Precip	Cumul Precip	Wind Velocity	Conditions
9/25/2015	72*		88*	0.00	32.70		Clear
9/28/2015	72*		88*	0.00	32.70		Clear
9/29/2015	65*		91*	0.00	32.70		Clear
9/30/2015	65*		91*	0.00	32.70		Clear
10/1/2015	65*		91*	0.00	32.70		Clear
10/2/2015	65*		91*	0.00	32.70		Clear
10/5/2015	65*		91*	0.00	32.70		Clear
10/6/2015	55*		83*	0.00	32.70		Clear
10/7/2015	55*		83*	0.00	32.70		Clear
10/8/2015	55*		83*	0.00	32.70		Clear
10/9/2015	55*		83*	0.00	32.70		Clear
10/12/2015	55*		83*	0.00	32.70		Clear
10/13/2015	55*		83*	0.00	32.70		Clear
10/14/2015	53*		96*	0.00	32.70		Clear
10/15/2015	66*		81*	0.00	32.70		Clear
10/16/2015	56*		86*	0.00	32.70		Clear
10/19/2015	56*		86*	0.00	32.70		Clear
10/20/2015	56*		86*	0.00	32.70		Clear
10/21/2015	56*		86*	0.00	32.70		Overcast/Rain
10/22/2015	56*		86*	4.00	36.70		Overcast/Rain, Storm
10/23/2015	56*		86*	5.00	41.70		Rain all day! Will have more rain through the night! Had 4" overnight and into Sat 24th morning Rain Day !!!!!!!!

AERIAL PHOTOS

BONNER CARRINGTON

Mariposa Apartment Homes
at Elk Drive

Print #150203560
Date: 02/03/15
Lat/Lon: 32.525652 -97.346980
Order No. 58093
Aerial Photography, Inc. 954-568-0484

BONNER CARRINGTON

Mariposa Apartment Homes
at Elk Drive

Print #150429574
Date: 04/29/15
Lat/Lon: 32.525652 -97.346980
Order No. 58093
Aerial Photography, Inc. 954-568-0484

NTERFOR

BONNER CARRINGTON

Mariposa Apartment Homes
at Elk Drive

Print #150804776
Date: 08/04/15
Lat/Lon: 32.525652 -97.346980
Order No. 58093
Aerial Photography, Inc. 954-568-0484

BONNER CARRINGTON

Mariposa Apartment Homes
at Elk Drive

Print #150901761
Date: 09/01/15
Lat/Lon: 32.525652 -97.346980
Order No. 58093
Aerial Photography, Inc. 954-568-0484

BONNER CARRINGTON

Mariposa Apartment Homes
at Elk Drive

Print #151001790
Date: 10/01/15
Lat/Lon: 32.525652 -97.346980
Order No. 58093
Aerial Photography, Inc. 954-568-0484

LOMR CORRESPONDENCE

Casey Bump <casey@bonnercarrington.com>

MED Burleson LOMR

Tillison, Tiffany <Tiffany.Tillison@aecom.com> Wed, Oct 14, 2015 at 2:09 PM
To: Casey Bump <casey@bonnercarrington.com>
Cc: "Danny McFadden @PD" <dmcfadden@pape-dawson.com>

Mr. Bump,

The LOMR Case No 15-06-3404P, Mariposa Apartments is currently going through the QC checks before FEMA approval. I do not have any updates beyond that, which is actually good news. This means that everything is going smoothly through the process. If anything comes up during the QC checks, I will notify my contact person immediately at Pape-Dawson, which is Erin Stiggins.

FEMA has 90-days from the last submittal of data. The 90-day deadline for your LOMR is December 12, 2015. I cannot guarantee that it will earlier than that, but my hope is that it definitely gets finished before then.

You are welcome to email me or call any time to request updates, but as long as it is going through the QC process I won't have much to add.

Thank you,

Tiffany Tillison

AECOM, a member of **Compass PTS JV**

D 972.735.7031

Tiffany.Tillison@aecom.com

AECOM

16000 Dallas Parkway, Suite 350
Dallas, Texas 75248

www.aecom.com

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141 West Renfro
Burleson, Texas 76028-4261
817-447-5400
Fax 817-426-0971
www.burlesontx.com

March 18, 2015

Owner / Representative:
Casey Bump
Mariposa Elk Drive LP
901 S Mopac Expwy, Bldg 4, Ste. 180
Austin, Texas 78746

RE: **Mariposa Apartment Homes**
Letter of Map Revision - LOMR

Dear Mr. Bump:

The city has received and reviewed a flood study for the Mariposa Apartment Homes prepared by Pape-Dawson Engineers. A flood study was prepared for the purpose of reclamation of a portion of the FEMA designation floodplain to facilitate the construction of the proposed apartment homes.

Comments were provided during the commercial site plan review as well as the civil construction plan review, informing the applicant and the engineer of the City's requirement per Section 6.4 of the City's Subdivision and Development Ordinance that a certificate of occupancy shall not be granted for those residential buildings located within a FEMA designated floodplain, until a Letter of Map Revision (LOMR) is approved by FEMA.

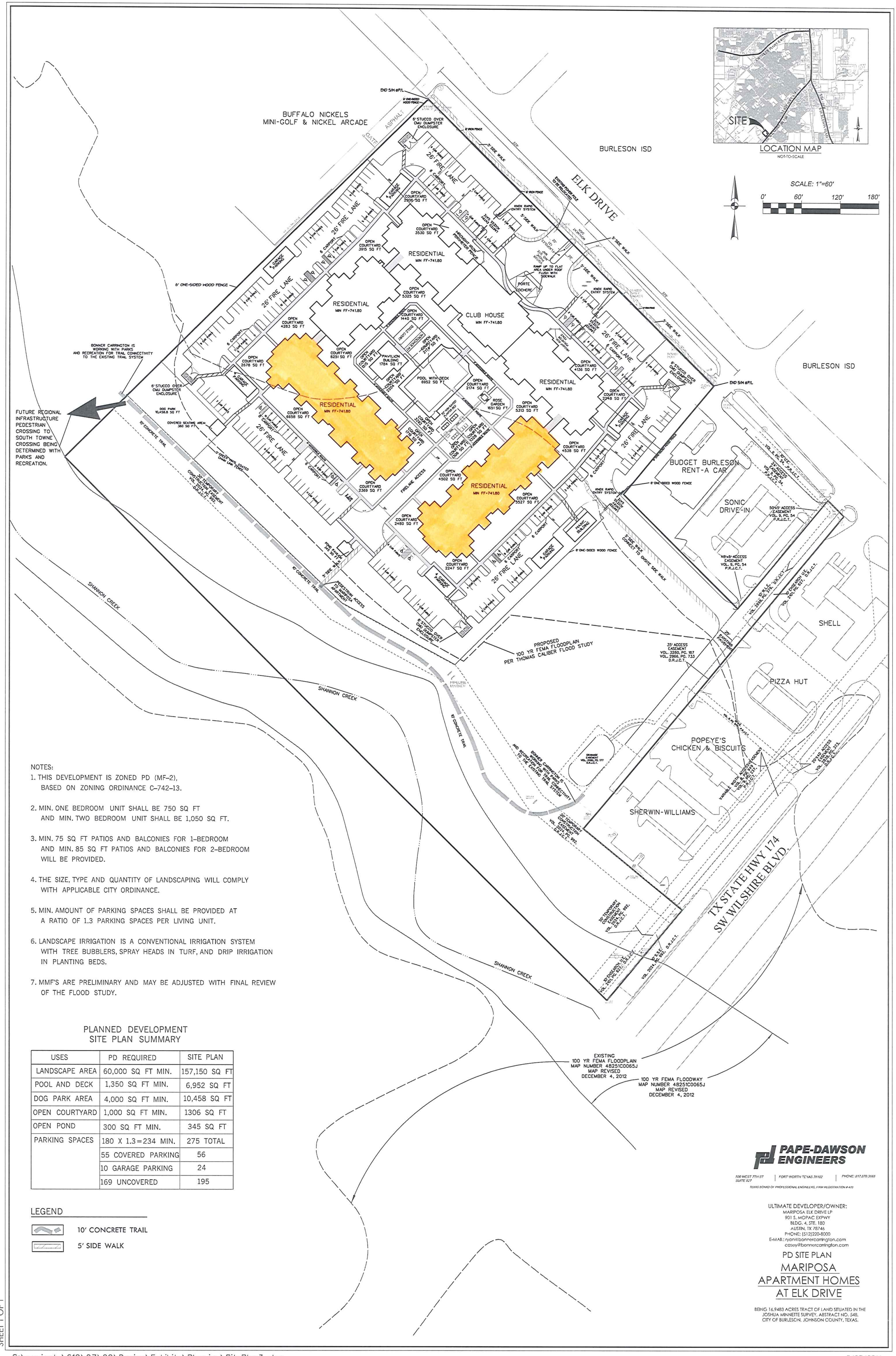
In an effort to not delay a certificate of occupancy for buildings the application for the LOMR should be submitted as soon as possible. Please be aware that FEMA's review and approval may take four to six months. Attached is a copy of the approved commercial site plan indicating the two buildings that will be affected highlighted in yellow and shall not receive a certificate of occupancy until the approved LOMR is received from FEMA.

Sincerely,

Michelle McCullough

Michelle McCullough, P.E., CFM
Civil Engineer

CC: file



USES	PD REQUIRED	SITE PLAN
LANDSCAPE AREA	60,000 SQ FT MIN.	157,150 SQ FT
POOL AND DECK	1,350 SQ FT MIN.	6,952 SQ FT
DOG PARK AREA	4,000 SQ FT MIN.	10,458 SQ FT
OPEN COURTYARD	1,000 SQ FT MIN.	1306 SQ FT
OPEN POND	300 SQ FT MIN.	345 SQ FT
PARKING SPACES	180 X 1.3=234 MIN.	275 TOTAL
	55 COVERED PARKING	56
	10 GARAGE PARKING	24
	169 UNCOVERED	195

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Wynnewood Family Housing (HTC # 13234).

RECOMMENDED ACTION

WHEREAS, Wynnewood Family Housing, LP (the "Development Owner") was allocated $1,928,670 in 9% Housing Tax Credits in 2013 to construct Wynnewood Family Housing (the "Development"), a development consisting of 161 new multifamily units in Dallas;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2015 and required by IRS Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the 2-year period described in §42(h)(1)(E)(i), as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued, and the notice was amended on Tuesday, June 16, 2015, and on Wednesday, July 1, 2015, to include Dallas County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms and flooding impacted construction crews on the Development during the construction phase and delayed construction progress, which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a six month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units, the requested changes do not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a three month extension with the further authorization for the Executive Director to grant an additional three month extension of the placed in service deadline is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Wynnewood Family Housing (aka High Point Family Housing) was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 161-unit, general population, reconstruction property located in Dallas. The Owner, Wynnewood Family Housing, LP and its General Partner, Wynnewood Family Housing GP, LLC, are owned and managed by Central Dallas Community Development Corporation, a non-profit corporation.

On October 2, 2015, the Owner's attorney submitted a letter to the Department requesting a six month extension to the date that the Owner is required to place each building and unit in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement, respectively. The Owner is seeking the relief under IRS Revenue Procedure 2007-54 (superseded and modified by IRS Revenue Procedure 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

The Notice to Proceed was issued on July 8, 2014, and site work began on August 5, 2014. The construction contract projected substantial completion to be achieved no later than 488 days from the date of commencement. However, according to the Owner, 109 days of construction progress were lost as of the end of August 2015 due to the heavy rainfall received in Dallas County, and an additional 43 days were limited by weather conditions. The Owner's request states that the construction contract provided for 43 days of bad weather that might halt construction.

A construction progress report dated November 17, 2014, conducted by CA Partners, Inc., reflected an anticipated construction schedule of approximately 16 months (commencing in June 2014), which would place construction completion in October 2015. The construction progress report as of December 11, 2014 indicated that, based on the Notice to Proceed dated July 8, 2014, construction completion would occur in November 2015. The report as of March 23, 2015 stated that onsite personnel indicated that muddy site conditions had slowed job progress over the past 30 to 60 days and also stated that Change Order No. 2 had increased the contract duration to December 15, 2015. As of May 15, 2015, the report indicated that work was approximately six weeks behind the projected completion date of December 15, 2015. However, the most recent report from CA Partners, Inc., as of September 24, 2015, states that the project was approximately 6-8 weeks behind schedule from the projected completion date of December 15, 2015 but also states that overall completion by late December 2015 was considered to be achievable given good weather and strong construction administration. As of September 24, 2015, the project was estimated to be approximately 68% complete. On October 21, 2015, the Owner stated that the project is 13 to 15 weeks behind schedule and that the project manager had resigned two weeks ago due to health conditions. A 13 to 15 week delay would place construction completion in March 2016, but the Owner anticipates further delays due to the loss of the project manager and additional rain in the forecast.

The Owner has submitted verification of the FEMA Notices of Major Disaster Declaration released on May 29, 2015 as well as the amended notices released on June 16, 2015, and July 1, 2015, that confirm the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015 and continuing under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The amended notices released on June 16, 2015, and July 1, 2015, included Dallas County as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Ruling for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The agency's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610 due to the IRS on February 28th.

The Owner has indicated that they are making all efforts to still meet the current deadline. Therefore, staff is recommending a three month extension with an additional three months to address any further delays as determined to be necessary by the Executive Director.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline, and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request as presented herein.

TAMEA A. DULA
OF COUNSEL

tdula@coatsrose.com
Direct Dial
(713) 653-7322
Direct Fax
(713) 890-3918

October 2, 2015

By Email to rosalio.banuelos@tdhca.state.tx.us

TDHCA
221 East 11th Street
Austin, TX 78701
Attn: Rosalio Banuelos

RE: **TDHCA # 13234; Wynnewood Family Housing, Dallas, Dallas County, Texas; Request for Extension of Placed in Service Deadline Pursuant to Rev. Proc. 2014-49.**

Dear Rosalio:

This letter is written on behalf of Wynnewood Family Housing, LP ("Project Owner") in connection with Wynnewood Family Housing (aka High Point Family Housing) (the "Project"). We request that the TDHCA grant to Project Owner a six (6) month extension of the Placed in Service Deadline due to the Project being in an area that suffered a Presidentially-declared Major Disaster after Carryover Allocation Agreement. The Project's Placed in Service Deadline is December 31, 2015. Up to a one (1) year extension is permitted by the Internal Revenue Service under Rev. Proc. 2014-49 (copy enclosed as Exhibit A).

Circumstances:

The Construction Contract for the Project calls for substantial completion within 488 calendar days from commencement (see pertinent pages attached as Exhibit B). The Notice to Proceed was given to ALTA Construction Management, LLC on July 8, 2014 (see Exhibit C), and site work began on the Project on August 5, 2014. As of the end of August, 2015, the Weather Tracking report for the Project (attached as Exhibit D) shows that construction had been halted at total of 152 days. Additionally, construction had been hampered a total of 36 days as the result of weather, although the site was not closed down on those days. The Construction Contract provided for 43 days of bad weather that might halt construction. The result is that as of the end of August, 2015, there were 109 days when work was halted that were not contemplated by the Construction Contract and an additional 43 days when the work that could be accomplished was limited by the weather conditions.

Another complicating factor is that the design of the Project required that the construction crane for the structural garage be moved into place before a portion of the site of Building 2 was accessible for commencement of construction. Weather delays in the pouring of the concrete garage structure

resulted in concomitant delays in beginning construction that portion of Building 2, which included 16 of the 48 units in Building 2.

Rev. Proc. 2014-49 Provides Extension Where Major Disaster Has Occurred:
Rev. Proc. 2014-49 gives a credit agency the ability to extend a placed in service deadline for up to one (1) year (until December 31st of the next succeeding year) if the city or county in which a project is located is the subject of a Presidentially-declared Major Disaster that occurs after the Carryover Allocation Agreement is filed. The Project is located in Dallas County, and Dallas County was the subject of a Presidential Declaration of a Major Disaster for severe storms, tornadoes, straight-line winds and flooding in an area that includes Dallas County (FEMA-2015-0002). The Initial Notice has been amended twelve times, with Dallas County being added to the counties authorized for Individual Assistance in Amendment No. 3, and for Public Assistance in Amendment No. 6. The incident period (the "Incident Period") during which the Major Disaster was determined to continue was established as being May 4, 2015 through and including June 22, 2015 in Amendment No. 9. (See Exhibit E for the Initial Notice and Amendments 3, 6 and 9.)

Comparing the Weather Tracking report for the Project with the Incident Period, it appears that of the 50 calendar days included within the Incident Period, 28 were so inclement due to rain that construction on the Project was halted, and there were four (4) additional days where the weather substantially hindered construction.

Request for Six (6) Month Extension Pursuant to Rev. Proc. 2014-49:
The Internal Revenue Service has provided recourse when 9% Housing Tax Credit developments are delayed due to untoward events that are serious enough to result in a declared Major Disaster and the ability to meet the placed in service deadline is impaired. This is exactly the circumstance for the Project, and we request that the TDHCA provide this recourse to the Project Owner. Although the Construction Contract contemplated and provided for "rain days" based upon the customary climate in the Dallas area, the construction period has been unusually inclement and included a Major Disaster consisting of storms, rain and flooding. Additionally, storms with the danger of lightning cause a prudent general contractor to halt construction activities that might endanger its workers. While the weather conditions that resulted in construction delays for the Project encompassed more than the Incident Period, the Incident Period has contributed greatly to the delay in construction. The original generous 488-day construction period has now expanded by an additional 109 days of requested extensions, making it unlikely that the Placed in Service Deadline will be met.

Because of the foregoing, we respectfully request that the TDHCA exercise the power that the Internal Revenue Service placed in credit agencies to avoid the failure of 9% Housing Tax Credit projects to qualify under Section 42 of the IRC. Although a full one-year extension is available under the Rev. Proc. 2014-49, the Project Owner requests only a six (6) month extension (through June 30, 2016), which we believe will be ample to achieve placement in service for the Project. We further request that the availability of this extension be considered by the TDHCA Board at the Board Meeting scheduled for November 12, 2015.

Because the Project Owner is making this request more than 30 days prior to the Placed in Service Deadline, we believe that no extension fee is required under §10.901(12) of the 2015 Uniform Multifamily Rules. Please let me know immediately if this is not correct.

If you have any questions, please do not hesitate to call me at 713-653-7322.

Sincerely,

Tamea A. Dula

Enclosures: Exhibits A - E

cc: Tim Irvine
Raquel Morales
Brian L. Roop
Darren Smith
John Greenan

EXHIBIT A

Rev. Proc. 2014-49

Revenue Procedure **2014-49**
Internal Revenue Service
2014-37 I.R.B. 535

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also: Part I, §§ 42 and 142; 1.42–5, 1.42–6, 1.42–13, 1.42–14.)

Rev. Proc. 2014–49

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. For low-income buildings financed with exempt facility bonds under § 142, see also Rev. Proc. 2014–50, I.R.B. 2014–37, which provides for emergency housing relief under § 142(d) in response to Major Disasters. This revenue procedure modifies and supersedes Rev. Proc. 2007–54, 2007–2 C.B. 293. See section 5 of this revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both. [1] With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Ser-vice) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals. [2]

****

[1] FEMA generally publishes this designation in a notice in the Federal Register.

[2] For relief under § 42, see e.g., Notice 2012–7, 2012–4 I.R.B. 308 (flooding in Iowa); Notice 2012–68, 2012–48 I.R.B. 574 (Hurricane Sandy); Notice 2013–40, 2013–25 I.R.B. 1254, and Notice 2013–47, 2013–31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013–64, 2013–44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013–9, 2013–9 I.R.B. 529 (Hurricane Sandy); Notice 2013–39, 2013–25 I.R.B. 1252, and Notice 2013–47 (severe storms and tornadoes in Oklahoma); and Notice 2013–63, 2013–44 I.R.B. 436 (weather-related disasters in Colorado).
****

.02 Under § 1.42–13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

SECTION 3. CHANGES

.01 Rev. Proc. 2007–54 established temporary relief from certain requirements of § 42 for Owners and Agencies in Major Disaster Areas. In particular, Rev. Proc. 2007–54 (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable for a restored building.

.02 Rev. Proc. 2007–54 also allowed Owners to rely on the self-certification of income eligibility of an individual who was displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the Major Disaster. The self-certification could not extend for more than four months beyond the date of the President's Major Disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified low-income tenant. After the four-month self-certification period, the self-certified tenant was treated as a qualified low-income tenant only if the Owner obtained all documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 The key modifications to Rev. Proc. 2007–54 in this revenue procedure include: (1) changing the reasonable restoration period for recapture relief and the tolling period for severely damaged, destroyed, or uninhabitable buildings in the first year of the credit period; (2) in determining qualified basis, using the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period as determined by FEMA, rather than at the end of the taxable year preceding the President's Major Disaster declaration; (3) incorporating a temporary suspension of certain income limitations for Displaced Individuals; (4) eliminating the need for self-certification of income eligibility; (5) permitting an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions; (6) describing the consequences of providing emergency housing relief in the first year of the credit period and after the first year of the credit period; and (7) modifying the safe harbor relating to the amount of credit allowable to a restored building to provide relief in circumstances where the restoration cost is less than the eligible basis cost.

SECTION 4. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all § 42 buildings (including buildings financed with exempt facility bonds under § 142), Agencies, and Owners both inside and outside States containing a Major Disaster Area.

SECTION 5. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 *Agency* . With respect to a Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 *Displaced Individual* . A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.

.03 *Major Disaster* . A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq* .

.04 *Major Disaster Area* . A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.05 *Market-Rate Unit* . A Market-Rate Unit is a unit that is not a low-income unit under § 42(i)(3).

.06 *Owner* . An Owner is the owner of a Project.

.07 *Project* . A Project is a project that is subject to low-income requirements under § 42.

.08 *Temporary Housing Period* . A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Agency under section 12.02 of this revenue procedure.

SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is defined in § 1.42–6(a)(1) as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple-building Projects).

.02 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the incident period for the Major Disaster began prior to the deadline in § 42(h)(1)(E), the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the building (land and depreciable basis) no later than the expiration of that extension. See § 1.42–6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension. See § 1.42–6 for specific rules on carryover allocations.

.04 If either section 6.04(1) or section 6.04(2) of this revenue procedure applies, then the Service will treat the carryover allocation as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02 of this revenue procedure, provided the Agency complies with the requirements of § 1.42–14(d)(3).

(1) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) before the expiration of the extension period granted under the authority of section 6.02. See § 1.42–14 for specific rules on returned credits.

(2) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) before the expiration of the extension period granted under the authority of section 6.03.

SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in section 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation pursuant to the procedures in this section 7.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster. Depending on the extent of the damage in a Major Disaster Area, an Agency may make this determination on an individual Project basis or determine that all Owners or a particular group of Owners in the Major Disaster Area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An extension under section 6.02 must not extend beyond six months after the date the Owner would otherwise be required to meet the 10-percent requirement of § 42(h)(1)(E)(ii). An extension under section 6.03 must not extend beyond December 31 of the year following the end of the two-year period described in § 42(h)(1)(E)(i). See § 1.42–6 for specific rules on carryover allocations. Based upon all facts and circumstances, an Agency has the discretion to provide shorter periods of relief than the maximum periods allowed by this section 7.02, or no relief at all.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that approves the relief under sections 6.02 and 6.03 of this revenue procedure must report to the Service the Projects granted relief by attaching the documentation required in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that received the Agency's approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 8. RECAPTURE RELIEF

.01 In general, under § 42(j)(1), if (1) a building is beyond the first year of the credit period, and (2) at the end of the taxable year, the building's qualified basis with respect to the taxpayer is less than the qualified basis with respect to the taxpayer at the end of the preceding taxable year, then the credits, if any,

for the year of the reduction are determined using the reduced qualified basis, and the taxpayer's Federal income tax liability for the year of the reduction is increased by the credit recapture amount prescribed in § 42(j)(2).

.02 If the building's qualified basis is reduced by reason of a casualty loss, then under § 42(j)(4)(E), a building is not subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period. The Agency must determine what constitutes a reasonable restoration period in the case of a Major Disaster that causes a reduction in qualified basis that would result in recapture or loss of credit. The reasonable restoration period established by the Agency must not extend beyond the end of the 25 th month following the close of the month of the Major Disaster declaration.

.03 To determine the credit amount allowable during the reasonable restoration period for a building described in section 8.02 of this revenue procedure, an Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period for the Major Disaster.

.04 If the Owner fails to restore the building within the reasonable restoration period determined by the Agency, then section 8.01 of this revenue procedure applies to the Owner and section 8.03 of this revenue procedure does not apply. The credit amount allowable, if any, after the Major Disaster is determined using the building's qualified basis at the end of each year of the credit period.

.05 Section 1.42–5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency. This requirement applies regardless of whether an Owner obtains the relief provided in section 8.02 of this revenue procedure.

.06 As part of its review procedure adopted under § 1.42–5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within the reasonable restoration period.

SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of the building's restoration and placement again into service.

.02 The extension permitted under section 9.01 of this revenue procedure does not extend the compliance monitoring deadlines for Owners in Major Disaster Areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a Major Disaster, the Agency must report the noncompliance on Form 8823 and describe how the Major Disaster contributed to the noncompliance.

SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings during the first year of the credit period that are severely damaged or destroyed in a Major Disaster Area, or uninhabitable as a result of a Major Disaster, an Agency has the discretion to treat the allocation as a returned credit to the Agency in accordance with the requirements of § 1.42–14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling period must not extend beyond the end of the 25 th month following the close of the month of the Major Disaster declaration. Owners may not claim any low-income housing credit during the restoration period of these first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those Projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 *No additional credit for restoration expenditures* . If a Major Disaster causes a building to suffer a reduction in qualified basis as described in section 8.01 of this revenue procedure in a taxable year during the compliance period, then § 42 does not allow the Owner to receive any additional credit amounts for costs to restore the building's qualified basis.

.02 *Additional credits allowed for rehabilitation expenditures* . As a result of either an allocation by an Agency or financing by exempt facility bonds, an Owner may receive an additional amount of credits for rehabilitation expenditures (as described in § 42(e)(2)) if those expenditures are used for rehabilitation and not for restoring qualified basis. A taxpayer may treat as rehabilitation expenditures any expenditures that are described in § 42(e)(2) and that exceed the amount expended for restoration. The amount expended for restoration is generally determined under all of the relevant facts and circumstances. However, if a Major Disaster causes a reduction in qualified basis, the Owner may alternatively treat as restoration expenditures the amount of—

(1) The building's eligible basis immediately before the Major Disaster; multiplied by

(2) The excess, if any, of—

a. 1.0 over

b. The fraction whose numerator is the building's post-Major Disaster qualified basis (determined for this purpose immediately after the Major Disaster) and whose denominator is the building's pre-Major Disaster qualified basis (determined for this purpose immediately before the Major Disaster).

.03 *Example* .

(a) *Facts* . Immediately before the Major Disaster described below, a low-income building contained 60 Market-Rate Units and 40 low-income units. Thus, the unit fraction under § 42(c)(1)(C) was 40/100. The eligible basis of the building was $10,000,000. Based on the unit fraction, the qualified basis was $4,000,000, which is the unit fraction multiplied by the eligible basis. A Major Disaster rendered 10 of the low-income units and several of the Market-Rate Units uninhabitable and damaged some building common areas. As a result of this damage to the common areas and to the residential units, the building's eligible basis was reduced to $8,500,000. Thus, immediately after the Major Disaster, the qualified basis is $2,550,000, which is the unit fraction of 30/100 (the unit fraction immediately after the Major Disaster), multiplied by $8,500,000 (the eligible basis at that time).

(b) *Analysis* . Under section 11.02(2) of this revenue procedure, the restoration amount is $3,625,000, and the building owner may treat any amount expended in excess of the restoration amount as rehabilitation expenditures (assuming the requirements of § 42(e) are met). The restoration amount is derived as the amount of—

a. $10,000,000, which is the building's eligible basis immediately before the Major Disaster; multiplied by

b. 0.3625, which is the excess of—

i. 1.0 over

ii. 0.6375, which is the fraction whose numerator is $2,550,000 (the qualified basis immediately after the Major Disaster) and whose denominator is $4,000,000 (the qualified basis immediately before the Major Disaster).

SECTION 12. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 *Requirements for Relief*. For an Owner to use the relief provided in section 13 of this revenue procedure, the conditions in this section 12 must be satisfied.

.02 *Agency Approval.*

(1) The Agency provides written approval to the Owner for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) For low-income buildings financed with exempt facility bonds under § 142, see section 5.02 of Rev. Proc. 2014–50, I.R.B. 2014–37.

.03 *Protection of Existing Tenants* . No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 42(g)(2) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.

.04 *Recordkeeping Requirements* . The Owner complies with the recordkeeping requirements in section 14 of this revenue procedure.

.05 *Rent Restrictions* . Gross rents for the low-income units that house Displaced Individuals do not exceed the maximum gross rent for those units that would apply under § 42(g)(2).

.06 *Project Meets All Remaining Requirements.* Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of § 42.

SECTION 13. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 *Discretion to Apply Relief*.

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Owner chooses not to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure, then all of the rules under § 42 apply.

(2) If an Owner chooses to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure then–

(A) The Owner may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a low-income tenant applying all the rules under § 42 or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure.

.02 *Satisfaction of the Non-Transient Use Requirement* . The occupancy of a unit in a Project by a Displaced Individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement under § 42(i)(3)(B)(i).

.03 *Treatment of Displaced Individuals Under the Next-Available-Unit Rule* . During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under § 42(g)(2)(D)(ii), an Owner disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals.

.04 *Treatment of Units in the First Year of the Credit Period* . If a Displaced Individual begins occupancy of a unit at a time that is within both the Temporary Housing Period and the first year of the credit period under § 42(f)(1), then during the Temporary Housing Period, while occupied by the Displaced Individual, the unit is treated as a low-income unit for the following purposes:

(1) Determining the Project's qualified basis under § 42(c)(1); and

(2) Meeting the Project's 20–50 test under § 42(g)(1)(A), 40–60 test under § 42(g)(1)(B), or 25–60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable. See section 13.06 of this revenue procedure for the treatment of a unit vacated by a Displaced Individual.

.05 *Treatment of Units After the First Year of the Credit Period* . If a Displaced Individual begins occupancy of a unit during the Temporary Housing Period but after the first year of the credit period under § 42(f)(1), then the unit retains the status it had immediately before that occupancy. That is–

(1) The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 42;

(2) If a unit is a low-income unit, a Market-Rate Unit, or a unit never previously occupied, then the unit remains as such while occupied by a Displaced Individual during the Temporary Housing Period, regardless of the occupancy by, or income of, the Displaced Individual; and

(3) The income of the Displaced Individual occupying the unit does not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor

does it affect the satisfaction of the 20–50 test under § 42(g)(1)(A), 40–60 test under § 42(g)(1)(B), or 25 –60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable.

.06 *Treatment of a Unit Vacated by a Displaced Individual* . If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under sections 13.04 or 13.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 13.04 or 13.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 42.

.07 *Income Qualifications when Temporary Housing Period Ends* .

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 13.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are reevaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 42(g)(1) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 42 as permitted by section 13.01(2)(B) of this revenue procedure, then all the rules under § 42 apply to the Displaced Individual, including § 42(g)(2)(D)(ii).

.08 *No Recapture* . The emergency housing of Displaced Individuals in low-income units during the Temporary Housing Period (and, if applicable, the 60-day correction period under section 13.07 under this revenue procedure) does not cause the building to suffer a reduction in qualified basis (which would cause the recapture of low-income housing credits).

SECTION 14. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Owners must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 12 and 13 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Owner must maintain a record both of the Agency's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Owner must report to the Agency at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Owner must also provide any dates Displaced Individuals ceased occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Owner must maintain the records described in this section as part of the annual compliance monitoring process with the Agency imposed by § 42 and provide this information to the Service upon request.

SECTION 15. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2007–54, 2007–2 C.B. 293.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

SECTION 17. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2237.

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 6, 7, 8, 9, 10, 12, 13, and 14. This information is required to enable the Service to verify whether the Owners and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 1,750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3,500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 18. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig at (202) 317-4137 (not a toll free number).

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EXHIBIT B

Relevant pages of the Construction Contract

Project Name: HighPoint Family
Location: Dallas, Texas
Name and Address of Project Architect: Galier Tolson French Design Associates
2344 Highway 121, Suite 100
Bedford, Texas 76021

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT ("Agreement") is made and entered into at Dallas Texas, effective as of the Sixteenth day of May, 2014 by and between Central Dallas Community Development Corporation, a Texas tax-exempt corporation, whose address is 511 N. Akard Street, Suite 301, Dallas, Texas 75201, and ALTA Construction Management, LLC., whose address is 4805 Keller Springs Rd, Addison, TX 75001 [authorized to do business in Texas] ("Subcontractor").

WHEREAS, Contractor has entered into an AIA construction contract (the "Prime Contract") with Wynnewood Family Housing, LP, a Texas limited partnership whose address is Bank of America Tower, 20th Floor, Dallas, Texas 75202-3714 ("Owner"), a copy of which Prime Contract is attached hereto as Exhibit D and made a part hereof, for the construction of a 161-unit apartment project, plus a clubhouse building and parking garage, (the "Project") in Dallas, Texas, with each unit being referred to herein as a "Unit" and each building referred to herein as a "Building;" and

WHEREAS, Subcontractor has experience in the construction of projects similar to the Project, and is capable of constructing the Project for Contractor; and

WHEREAS, Contractor desires to retain Subcontractor to perform the construction of the Project on the same terms and conditions as set forth in the Prime Contract; and

WHEREAS, Contractor has obtained, or will obtain prior to the purchase of any materials by Contractor under the Prime Contract or by Subcontractor under this Agreement, an exemption from Texas sales and use taxes from the Texas Comptroller of Public Accounts.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor and Subcontractor agree as follows:

1. Subcontract Documents. The Subcontract Documents shall consist of this Agreement, the Prime Contract and the other Contract Documents referred to therein, modifications to the Prime Contract agreed to between Owner and Contractor with the consent of Subcontractor, and any modifications to this Agreement agreed to by Contractor and Subcontractor. Copies of all change orders or other modifications to the Prime Contract shall be delivered to Subcontractor for its approval before such changes become binding upon Subcontractor. The cost to Contractor of Change Orders shall be equal to the actual cost to Subcontractor of such Work plus 5% Overhead and 8% Profit. Capitalized terms used herein

shall have the meaning set forth in this Agreement or, if not set forth herein, the meanings set forth in the Prime Contract.

2. Engagement of Subcontractor. Contractor hereby engages Subcontractor to perform all of the Work required to be performed by Contractor under the Prime Contract with respect to the Project, including without limitation, the provision of all labor and materials required under the Prime Contract. Contractor hereby assumes toward Subcontractor all obligations and responsibilities that the Owner and the Architect, under the Prime Contract and Contract Documents, owes and assumes toward the Contractor, all such obligations and responsibilities under the Prime Contract and Contract Documents being incorporated herein by reference. Subcontractor hereby assumes toward Contractor all obligations and responsibilities which the Contractor, under the Prime Contract and Contract Documents, owes and assumes toward Owner and the Architect, all such obligations and responsibilities under the Prime Contract and Contract Documents being incorporated herein by reference. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under the Prime Contract and Contract Documents, has against the Contractor, all such rights and remedies under the Prime Contract and Contract Documents being incorporated herein by reference. Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under the Prime Contract and Contract Documents, has against the Owner, all such rights and remedies under the Prime Contract and Contract Documents being incorporated herein by reference and Subcontractor may enforce those rights, remedies and redress directly against the Owner. Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of construction of the Work. In no event will the failure of Contractor to perform any obligation of Contractor under this Agreement constitute a breach of this Agreement if such failure is the result of Owner's failure to perform Owner's obligations under the Prime Contract, provided however, that if an Owner Default exists, Contractor agrees to either (a) diligently pursue all rights and remedies against Owner with respect to the Owner Default or (b) appoint Subcontractor as Contractor's attorney-in-fact to pursue all such rights and remedies on behalf of Contractor against owner with respect to the Owner Default. Any failure by Contractor to perform as required by clauses (a) and (b) above of this Section 2 shall be a breach of this Subcontract.

3. Right to Further Subcontract the Work. Subcontractor shall have the right to enter into agreements with sub-subcontractors and material suppliers to perform all or any portion of the Work of the Project, and such sub-subcontractors and material suppliers may acquire materials for resale to Subcontractor to be used or incorporated in the Project.

4. Commencement and Completion of the Work. Subcontractor shall commence the Work at such time as all conditions to commencement of the work under the Prime Contract have been satisfied and Contractor is obligated to commence its Work. Subcontractor shall substantially complete the Work according to the construction schedule set forth in the Prime Contract, "Substantial Completion" shall be determined on the basis set forth in the Prime Contract. The parties agree that delays in the completion of the Work beyond the dates specified in the Construction Schedule set forth in the Prime Contract would result in the loss of certain economic and tax benefits to Owner and its partners which would be extremely difficult and impracticable to fix or ascertain under presently known and anticipated facts and

provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

In claims against any person or entity indemnified under this section by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

NOTWITHSTANDING ANYTHING IN THE CONTRACT DOCUMENTS TO THE CONTRARY, IN THE EVENT THIS CONTRACT RELATES TO A PROJECT OTHER THAN A SINGLE FAMILY HOUSE, TOWNHOUSE, DUPLEX, OR LAND DEVELOPMENT DIRECTLY RELATED THERETO OR A PUBLIC WORKS PROJECT OF A MUNICIPALITY THEN THE INDEMNITY PROVISIONS INCLUDED HEREIN SHALL BE LIMITED SUCH THAT SUBCONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR DEFEND CONTRACTOR OR ANY THIRD PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER EXCEPT THAT SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITIEES SET FORTH HEREIN AGAINST ANY CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS , OR ITS SUBCONTRACTORS OF ANY TIER.

IN WITNESS WHEREOF, the parties have executed this Agreement at the place and as of the date set forth on the first page hereof.

CONTRACTOR:	SUBCONTRACTOR:
Central Dallas Community Development Corporation.	ALTA Construction Management, LLC
A Texas Tax-Exempt Corporation	A Texas corporation
By: [signature]	By: [signature]
	Eric McMillen / President Alta Construction Management, LLC

AIA® Document A102™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Sixteenth day of May in the year Two Thousand Fourteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Wynnewood Family Housing, LP
901 Main St.
Bank of America Tower
20th Floor
Dallas, TX 75202-3714

and the Contractor:
(Name, legal status, address and other information)

Central Dallas Community Development Corporation
511 N. Akard St., Ste. 301
Dallas, Texas 75201

for the following Project:
(Name, location and detailed description)

HighPoint Family Housing
The Work is located on approximately 3.982 acres along Zang Boulevard at the intersection of W. Louisiana Avenue in Dallas, TX.
The Work is to construct 161 family housing apartments with related amenity and support per the Contract Documents.

The Architect:
(Name, legal status, address and other information)

Galier Tolson French
2344 Highway 121, Suit e100
Bedford, TX 76021
Telephone Number: (817) 514-0584
Email: marc@gtfdesign.com

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes:

interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed in a notice to proceed.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Four hundred eighty-eight (488) days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Reference Exhibit B Prime Subcontractor's Construction Schedule

Portion of Work	Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

Should Substantial Completion of the Work occur after the expiration of the Contract time, the Contractor shall be liable for and pay to Owner the sum of Five Hundred and no/100 Dollars ($500.00) per calendar day up to thirty (30) calendar days, and One Thousand and no/100 Dollars ($1,000.00) per calendar day thereafter beginning on the thirty-first (31st) calendar day after the Contract Time has expired for each calendar day that Substantial Completion of the Work is delayed beyond the Contract Time (or any extensions(s) thereof to which Contractor is entitled under the terms and provisions or any Change Order approved by Owner and the Architect), as liquidated damages.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

Four Hundred Ninety-One Thousand Nine Hundred Forty-Six Dollars ($491,946)

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

Five Percent (5%) for Fee and Eight (8%) for Overhead.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Init.

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User Notes:

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
Title of Drawings exhibit: HighPoint Family Permit Set dated February 14, 2014
Addendum One dated March 03, 2014

Number	Title	Date

§ 16.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A Prime Subcontractor's Detail Estimate 4/4/2014
Exhibit B Prime Subcontractor's Construction Schedule 5/9/2014
Exhibit C Contractor's Sales and Use Tax Exemption Certificate

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount ($0.00)

This Agreement entered into as of the day and year first written above.

[signature]
OWNER *(Signature)*

Brian L. Roop
(Printed name and title)
Authorized Representative
Wynnewood Family Housing, L.P.

[signature]
CONTRACTOR *(Signature)*

John Greenan, Executive Director
(Printed name and title)

Init.

/

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User Notes:

EXHIBIT C

Notice to Proceed dated July 8, 2014

Eric McMillen
ALTA Construction Management, LLC
4813 Keller Springs Rd
Addison, Texas 75001

July 08, 2014

Re: Wynnewood/HighPoint Family Housing
Notice to Proceed

Via: Electronic Delivery

Dear Mr. McMillen:

On behalf of the Owner, Wynnewood Family Housing, LP, and Central Dallas Community Development Corporation we are pleased to issue to you this Official Notice To Proceed for the above referenced project effective today.

We look forward to successful project with ALTA Construction Management, LLC.

Sincerely,
Design and Construction Solutions, LLC

Matthew D. Blaxton

Cc: Brian Roop, Darren Smith, John Pool, John Greenan, File

EXHIBIT D

ALTA Construction Management, LLC Weather Tracking Report

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Sep-14

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain											1.2"	1.1"			1.3"		1.2"														
Mud											hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	ham ham ham									
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 11 for September 2014

Requested days Extension 8 for September 2014

Project Superintendent Tom Persinger **Date Submitted to Client** 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Oct-14

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain		1.0"				.8"					1.1"		2.3"																		
Mud		HLT	HLT	HLT	HLT	HLT	HLT	HLT	HAM	HAM	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HAM	HAM												
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 5 Total Days lost due to weather 14 for October 2014

Requested days Extension 9 for October 2014

Project Superintendent Tom Persinger **Date Submitted to Client** 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: November

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain				1.2"	.8"											.2"						.4"	.2"								
Mud				HLT	HLT	HLT	HLT	HLT	HLT	HAM						HLT	HLT	HAM				HLT	HLT	HLT	HAM						
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 11 for November

Requested days Extension 8 for November 2014

Project Superintendent Tom Persinger Date Submitted to Client 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Dec-14

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain														.3"			.2"	.2"	.2"				.5"			.2"					
Mud														HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT			
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 15 for December 2014

Requested days Extension 12 for December 2014

Project Superintendent Tom Persinger Date Submitted to Client 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Jan-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain	1."	.5"	.5"								.3"										.7"	1.6"	1.3"								.7"
Mud	hlt	hlt	hlt	hlt	hlt	ham	ham	ham			hlt	hlt	hlt	ham	ham						hlt	hlt	hlt	hlt	hlt	hlt	ham	ham			hlt
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 2 Total Days lost due to weather 14 for January 2015

Requested days Extension 12 for January 2015

Project Superintendent Tom Persinger Date Submitted to Client 2/10/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Feb-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain					0.2"											0.2"	0.2"			0.2"		0.5"	0.5"	0.4"	0.3"			0.3"			
Mud	Halt	Halt	Hamp	Hamp	Halt	Halt	Halt	Hamp								Halt	Halt			Halt	halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt			
Sleet					Sleet & Ice	ice														Mix			Sleet & Ice	Ice	Sleet & Ice	ice	Sleet & Ice	Sleet & Ice			
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 16 for February 2015

Requested days Extension 13 for February 2015

Project Superintendent Tom Persinger

Date Submitted to Client 3/3/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Mar-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain					0.5"				1.1"				0.7"					0.2"		0.6"	0.2"	1.2"				0.2"					
Mud	Halt	Halt	Hamp	Hamp	Halt	Halt	Halt	Hamp	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Hamp	Halt	Halt	Halt	halt	Halt	Halt	Halt	Hamp	Halt	Halt	Halt			
Sleet																															
Snow						Snow 0.5"	Snow 4"																								
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 23 for March 2015

Requested days Extension 19 for March 2015

Project Superintendent Tom Persinger

Date Submitted to Client 4/3/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Apr-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain					1.3"	0.3"			0.2"								1.2"					0.2"	0.6"	0.4"	0.5"	0.2"	0.5"	1.2"			
Mud					Halt	Halt	Halt	Hamp	Halt	Halt	Hamp						Halt	Halt	Halt	Hamp		Halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Hamp	
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 16 for April 2015

Requested days Extension 12 for April 2015

Project Superintendent Tom Persinger

Date Submitted to Client 4/29/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: May-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain						0.5"	0.4"	3.0"	0.5"	3.9"			1.4"		0.5"	0.4"	4.0"	0.8"		1.0"	1.6"		0.5"	0.3"	5.0"	0.6"	0.6"	2.2"	2.9"	2.3"	
Mud						Halt	Halt	Halt	Halt	Halt	Halt	Hamp	Halt	Hamp	Halt	Halt	Halt	Halt	Hamp	Halt	Halt	Hamp	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt	
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 5 Total Days lost due to weather 20 for May 2015

Requested days Extension 15 for May 2015

Project Superintendent Tom Persinger Date Submitted to Client 6/1/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Jun-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain														2.0"	0.5"	0.3"	5.2"				0.5"					1.0"	0.3"			1.1"	
Mud														Halt	Halt	Halt	Halt	Halt	Halt	Hamp	Halt	Halt	Hamp			Halt	Halt	Halt		Halt	Hamp
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 12 for June 2015

Requested days Extension 8 for June 2015

Project Superintendent Tom Persinger Date Submitted to Client 7/1/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Jul-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain																															
Mud	X																														
Sleet																															
Snow																															
Temperature Daily Low	96	90	82	90		82	81	78	87	90	90		99	99	97	97	99	100	103	98	97	97	99	99	100	99	100	100	100	102	
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 0 for July

Requested days Extension 0 for July 2015

Project Superintendent Thomas Persinger **Date Submitted to Client** ____________

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Aug-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain											0.8"																				
Mud																															
Sleet																															
Snow																															
Temperature Daily Low	100	--	88	81	98	102	101	100	--	105	103	102	100	99	98	--	98	101	98	82	94	98	--	98	98	98	99	104	98		
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 0 for August 2015

Requested days Extension 0 for August 2015

Project Superintendent Tom Persinger Date Submitted to Client 9/1/2015

EXHIBIT E

Initial Notice and Amendments 3, 6 and 9

Disaster Federal Register Notices: Texas Severe Storms, Tornadoes, Straight-line Winds, and Flooding

Initial Notice

DATE OF NOTICE: FRIDAY, MAY 29, 2015

Amendment No. 1

DATE OF NOTICE: FRIDAY, JUNE 5, 2015

Amendment No. 2

DATE OF NOTICE: TUESDAY, JUNE 9, 2015

Amendment No. 3

DATE OF NOTICE: TUESDAY, JUNE 16, 2015

Amendment No. 4

DATE OF NOTICE: FRIDAY, JUNE 19, 2015

Amendment No. 5

DATE OF NOTICE: WEDNESDAY, JUNE 24, 2015

Amendment No. 6

DATE OF NOTICE: WEDNESDAY, JULY 1, 2015

Amendment No. 7

DATE OF NOTICE: THURSDAY, JULY 9, 2015

Amendment No. 8

DATE OF NOTICE: FRIDAY, JULY 17, 2015

Amendment No. 10

DATE OF NOTICE: TUESDAY, JULY 21, 2015

Amendment No. 9

DATE OF NOTICE: TUESDAY, JULY 21, 2015

Amendment No. 11

DATE OF NOTICE: THURSDAY, JULY 23, 2015

Amendment No. 12

DATE OF NOTICE: TUESDAY, AUGUST 4, 2015

Initial Notice

Date of Notice:
Friday, May 29, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.

EFFECTIVE DATE: May 29, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

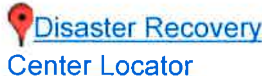
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 29, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.


Disaster Recovery Center Locator

I have determined that the damage in certain areas of the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Harris, Hays, and Van Zandt Counties for Individual Assistance.

Cooke, Gaines, Grimes, Harris, Hays, Navarro, and Van Zandt Counties for Public Assistance.

All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

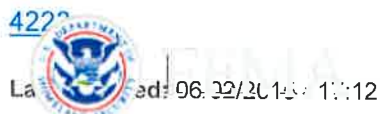
The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.



Amendment No. 3

Date of Notice:

Tuesday, June 16, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated

May 29, 2015, and related determinations.

EFFECTIVE DATE: June 16, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

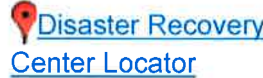
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.



Disaster Recovery Center Locator

affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

> Dallas and Nueces Counties for Individual Assistance.
>
> Cooke, Fannin, Grayson, Liberty, and Walker Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

4223

Last Updated: 06/16/2015 - 17:12

Amendment No. 6

Date of Notice:
Wednesday, July 1, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated

May 29, 2015, and related determinations.

EFFECTIVE DATE: July 1, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.

Disaster Recovery Center Locator

affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

Brazoria and Ellis Counties for Individual Assistance.

Bowie, Cherokee, and Harrison Counties for Individual Assistance (already designated for Public Assistance).

Callahan, Dickens, Edwards, Frio, Hartley, Hill, Leon, Parker, Real, Trinity, and Victoria Counties for Public Assistance.

Dallas, Eastland, Hidalgo, and Nueces Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

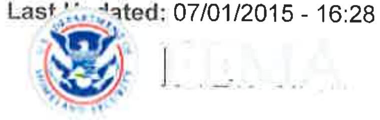
W. Craig Fugate,

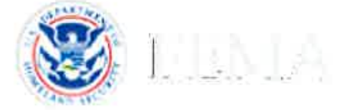
Administrator,

Federal Emergency Management Agency.

4223

Last Updated: 07/01/2015 - 16:28





Amendment No. 9

Date of Notice:
Tuesday, July 21, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.

EFFECTIVE DATE: July 21, 2015

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period is now May 4, 2015, through and including June 22, 2015.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.

Disaster Recovery Center Locator

dra[illegible] funds: 97.030, Community Disaster Loans; 97[illegible]ora Brow[illegible] Fund; 97.032, Crisis Counseling; 97[illegible]isaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

4223

Last Updated: 07/21/2015 - 13:55

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Oak Creek Village (fka Oak Creek Apartments, HTC # 13252).

RECOMMENDED ACTION

WHEREAS, 2013 Travis Oak Creek, LP (Development Owner) was allocated $2,000,000 in 9% Housing Tax Credits in 2013 to construct Oak Creek Village (the "Development"), a development consisting of 173 new multifamily units in Austin;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement and Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49, allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the 2-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued and the notice was amended on Friday, June 5, 2015 and on Tuesday, June 9, 2015, to include Travis County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms and flooding between January and July of 2015 impacted construction crews on the Development and delayed construction progress for a total of 34 days due to inclement weather which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a two month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units the requested changes do not negatively affect the Development or impact the long term viability of the transaction and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a two month extension of the placed in service deadline is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Oak Creek Village (fka Oak Creek Apartments) was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 173 unit, general population, new construction property located in Austin. The Owner, 2013 Travis Oak Creek, LP (Rene Campos) and its Co-General Partners, 2013 Travis Oak Creek, GP, LLC, and 2008 South San Antonio Pines GP, LLC, are owned and managed by Rene Campos, a 100% Individual Member.

The Owner, on October 26, 2015, submitted a letter to the Department requesting a two month extension to the date the Owner is required to place each building in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Owner is seeking the relief under IRS Revenue Procedure 2007-54 (superseded and modified by IRS Procedure Ruling 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

According to the Owner, construction was delayed for a total of 34 days due to inclement weather between January 1, 2015 and July 5, 2015. The Owner's request states that the excessive rain (an overall 39.14 inches of rainfall compared to a typical average of 18.23 inches) on the construction site delayed timely completion of site work (including critical water quality facilities, public road improvements, and internal roadways), installation of utilities, concrete placement, wood framing, and the installation of roofing and exterior building cladding and dry-in. As an alternative to an approval of this extension request, the Owner has requested to be permitted to return the credits and receive a re-allocation of credits in the current year pursuant to the Force Majeure provisions in 10 TAC §11.6(5) of the 2015 Qualified Allocation Plan. The Owner has stated the belief that the Development meets all of the requirements of 10 TAC §11.6(5).

According to the Development's latest quarterly Construction Status Report and pay application, dated September 30, 2015, the Development was 81% complete. Weather delays were highlighted by OCV, the third party construction report provider, with an accompanying weather log showing 34 weather days and several affected critical path activities (such as site paving, garage excavation and soil nailing, site utilities, pond utilities, and drain piping). Delays are also noted in the Owner's request and in the construction report related to the discovery of underground HVAC chiller lines and other utilities found in non-mapped locations, installation of foundation drains related to subsurface rock conditions, and plan modifications required by the City of Austin. According to the request letter, the Owner and its consultants have made, and continue to make, extra efforts to expedite and compress schedule activities, including spending significant additional resources, to meet the placed in service date; however, the Owner believes it is prudent to request an extension in case its compressed schedule for delivery encounters additional unforeseen delays. The current schedule submitted with the construction report shows planned completion of substantial construction as of November 25, 2015, and final project completion occurring between December 14, 2015 and January 11, 2016; however, the report states that though the construction contract completion date has not changed, the project is not on time due to weather delays and contract extensions are pending.

The Owner's request has referred to the FEMA Notices of Major Disaster Declaration released on May 29, 2015 as well as the amended notices released on June 5, 2015, and June 9, 2015, that confirm the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015 – June 22, 2015. The amended notices released on June 5, 2015 and June 9, 2015 included Travis County as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Ruling for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of a disaster that led to a major disaster declaration under the Stafford Act. The Department's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610, due to the IRS on February 28th.

The Owner has indicated that they are making all efforts to still meet the current deadline. Staff is recommending a two month extension.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request as presented herein.

A Professional Corporation

TAMEA A. DULA
OF COUNSEL

tdula@coatsrose.com
Direct Dial
(713) 653-7322
Direct Fax
(713) 890-3918

October 2, 2015

By Email to rosalio.banuelos@tdhca.state.tx.us

TDHCA
221 East 11th Street
Austin, TX 78701
Attn: Rosalio Banuelos

RE: **TDHCA # 13234; Wynnewood Family Housing, Dallas, Dallas County, Texas; Request for Extension of Placed in Service Deadline Pursuant to Rev. Proc. 2014-49.**

Dear Rosalio:

This letter is written on behalf of Wynnewood Family Housing, LP ("Project Owner") in connection with Wynnewood Family Housing (aka High Point Family Housing) (the "Project"). We request that the TDHCA grant to Project Owner a six (6) month extension of the Placed in Service Deadline due to the Project being in an area that suffered a Presidentially-declared Major Disaster after Carryover Allocation Agreement. The Project's Placed in Service Deadline is December 31, 2015. Up to a one (1) year extension is permitted by the Internal Revenue Service under Rev. Proc. 2014-49 (copy enclosed as Exhibit A).

Circumstances:

The Construction Contract for the Project calls for substantial completion within 488 calendar days from commencement (see pertinent pages attached as Exhibit B). The Notice to Proceed was given to ALTA Construction Management, LLC on July 8, 2014 (see Exhibit C), and site work began on the Project on August 5, 2014. As of the end of August, 2015, the Weather Tracking report for the Project (attached as Exhibit D) shows that construction had been halted at total of 152 days. Additionally, construction had been hampered a total of 36 days as the result of weather, although the site was not closed down on those days. The Construction Contract provided for 43 days of bad weather that might halt construction. The result is that as of the end of August, 2015, there were 109 days when work was halted that were not contemplated by the Construction Contract and an additional 43 days when the work that could be accomplished was limited by the weather conditions.

Another complicating factor is that the design of the Project required that the construction crane for the structural garage be moved into place before a portion of the site of Building 2 was accessible for commencement of construction. Weather delays in the pouring of the concrete garage structure

resulted in concomitant delays in beginning construction that portion of Building 2, which included 16 of the 48 units in Building 2.

Rev. Proc. 2014-49 Provides Extension Where Major Disaster Has Occurred:
Rev. Proc. 2014-49 gives a credit agency the ability to extend a placed in service deadline for up to one (1) year (until December 31st of the next succeeding year) if the city or county in which a project is located is the subject of a Presidentially-declared Major Disaster that occurs after the Carryover Allocation Agreement is filed. The Project is located in Dallas County, and Dallas County was the subject of a Presidential Declaration of a Major Disaster for severe storms, tornadoes, straight-line winds and flooding in an area that includes Dallas County (FEMA-2015-0002). The Initial Notice has been amended twelve times, with Dallas County being added to the counties authorized for Individual Assistance in Amendment No. 3, and for Public Assistance in Amendment No. 6. The incident period (the "Incident Period") during which the Major Disaster was determined to continue was established as being May 4, 2015 through and including June 22, 2015 in Amendment No. 9. (See Exhibit E for the Initial Notice and Amendments 3, 6 and 9.)

Comparing the Weather Tracking report for the Project with the Incident Period, it appears that of the 50 calendar days included within the Incident Period, 28 were so inclement due to rain that construction on the Project was halted, and there were four (4) additional days where the weather substantially hindered construction.

Request for Six (6) Month Extension Pursuant to Rev. Proc. 2014-49:
The Internal Revenue Service has provided recourse when 9% Housing Tax Credit developments are delayed due to untoward events that are serious enough to result in a declared Major Disaster and the ability to meet the placed in service deadline is impaired. This is exactly the circumstance for the Project, and we request that the TDHCA provide this recourse to the Project Owner. Although the Construction Contract contemplated and provided for "rain days" based upon the customary climate in the Dallas area, the construction period has been unusually inclement and included a Major Disaster consisting of storms, rain and flooding. Additionally, storms with the danger of lightning cause a prudent general contractor to halt construction activities that might endanger its workers. While the weather conditions that resulted in construction delays for the Project encompassed more than the Incident Period, the Incident Period has contributed greatly to the delay in construction. The original generous 488-day construction period has now expanded by an additional 109 days of requested extensions, making it unlikely that the Placed in Service Deadline will be met.

Because of the foregoing, we respectfully request that the TDHCA exercise the power that the Internal Revenue Service placed in credit agencies to avoid the failure of 9% Housing Tax Credit projects to qualify under Section 42 of the IRC. Although a full one-year extension is available under the Rev. Proc. 2014-49, the Project Owner requests only a six (6) month extension (through June 30, 2016), which we believe will be ample to achieve placement in service for the Project. We further request that the availability of this extension be considered by the TDHCA Board at the Board Meeting scheduled for November 12, 2015.

Because the Project Owner is making this request more than 30 days prior to the Placed in Service Deadline, we believe that no extension fee is required under §10.901(12) of the 2015 Uniform Multifamily Rules. Please let me know immediately if this is not correct.

If you have any questions, please do not hesitate to call me at 713-653-7322.

Sincerely,

Tamea A. Dula

Enclosures: Exhibits A - E

cc: Tim Irvine
Raquel Morales
Brian L. Roop
Darren Smith
John Greenan

EXHIBIT A

Rev. Proc. 2014-49

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SEARCHING: **Revenue Procedures**
RESULTS: FOUND: **9** HITS IN **2** DOCUMENTS SEARCHING ON **2014-49**

First hit | Next document | Previous document | Back to results | New search

Revenue Procedure **2014-49**
Internal Revenue Service
2014-37 I.R.B. 535

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also: Part I, §§ 42 and 142; 1.42–5, 1.42–6, 1.42–13, 1.42–14.)

Rev. Proc. 2014–49

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. For low-income buildings financed with exempt facility bonds under § 142, see also Rev. Proc. 2014–50, I.R.B. 2014–37, which provides for emergency housing relief under § 142(d) in response to Major Disasters. This revenue procedure modifies and supersedes Rev. Proc. 2007–54, 2007–2 C.B. 293. See section 5 of this revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both. [1] With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Ser-vice) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals. [2]

****

[1] FEMA generally publishes this designation in a notice in the Federal Register.

[2] For relief under § 42, see e.g., Notice 2012–7, 2012–4 I.R.B. 308 (flooding in Iowa); Notice 2012–68, 2012–48 I.R.B. 574 (Hurricane Sandy); Notice 2013–40, 2013–25 I.R.B. 1254, and Notice 2013–47, 2013–31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013–64, 2013–44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013–9, 2013–9 I.R.B. 529 (Hurricane Sandy); Notice 2013–39, 2013–25 I.R.B. 1252, and Notice 2013–47 (severe storms and tornadoes in Oklahoma); and Notice 2013–63, 2013–44 I.R.B. 436 (weather-related disasters in Colorado).
****

.02 Under § 1.42–13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

SECTION 3. CHANGES

.01 Rev. Proc. 2007–54 established temporary relief from certain requirements of § 42 for Owners and Agencies in Major Disaster Areas. In particular, Rev. Proc. 2007–54 (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable for a restored building.

.02 Rev. Proc. 2007–54 also allowed Owners to rely on the self-certification of income eligibility of an individual who was displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the Major Disaster. The self-certification could not extend for more than four months beyond the date of the President's Major Disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified low-income tenant. After the four-month self-certification period, the self-certified tenant was treated as a qualified low-income tenant only if the Owner obtained all documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 The key modifications to Rev. Proc. 2007–54 in this revenue procedure include: (1) changing the reasonable restoration period for recapture relief and the tolling period for severely damaged, destroyed, or uninhabitable buildings in the first year of the credit period; (2) in determining qualified basis, using the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period as determined by FEMA, rather than at the end of the taxable year preceding the President's Major Disaster declaration; (3) incorporating a temporary suspension of certain income limitations for Displaced Individuals; (4) eliminating the need for self-certification of income eligibility; (5) permitting an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions; (6) describing the consequences of providing emergency housing relief in the first year of the credit period and after the first year of the credit period; and (7) modifying the safe harbor relating to the amount of credit allowable to a restored building to provide relief in circumstances where the restoration cost is less than the eligible basis cost.

SECTION 4. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all § 42 buildings (including buildings financed with exempt facility bonds under § 142), Agencies, and Owners both inside and outside States containing a Major Disaster Area.

SECTION 5. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 *Agency* . With respect to a Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 *Displaced Individual* . A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.

.03 *Major Disaster* . A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq* .

.04 *Major Disaster Area* . A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.05 *Market-Rate Unit* . A Market-Rate Unit is a unit that is not a low-income unit under § 42(i)(3).

.06 *Owner* . An Owner is the owner of a Project.

.07 *Project* . A Project is a project that is subject to low-income requirements under § 42.

.08 *Temporary Housing Period* . A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Agency under section 12.02 of this revenue procedure.

SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is defined in § 1.42–6(a)(1) as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple-building Projects).

.02 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the incident period for the Major Disaster began prior to the deadline in § 42(h)(1)(E), the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the building (land and depreciable basis) no later than the expiration of that extension. See § 1.42–6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension. See § 1.42–6 for specific rules on carryover allocations.

.04 If either section 6.04(1) or section 6.04(2) of this revenue procedure applies, then the Service will treat the carryover allocation as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02 of this revenue procedure, provided the Agency complies with the requirements of § 1.42–14(d)(3).

(1) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) before the expiration of the extension period granted under the authority of section 6.02. See § 1.42–14 for specific rules on returned credits.

(2) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) before the expiration of the extension period granted under the authority of section 6.03.

SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in section 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation pursuant to the procedures in this section 7.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster. Depending on the extent of the damage in a Major Disaster Area, an Agency may make this determination on an individual Project basis or determine that all Owners or a particular group of Owners in the Major Disaster Area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An extension under section 6.02 must not extend beyond six months after the date the Owner would otherwise be required to meet the 10-percent requirement of § 42(h)(1)(E)(ii). An extension under section 6.03 must not extend beyond December 31 of the year following the end of the two-year period described in § 42(h)(1)(E)(i). See § 1.42–6 for specific rules on carryover allocations. Based upon all facts and circumstances, an Agency has the discretion to provide shorter periods of relief than the maximum periods allowed by this section 7.02, or no relief at all.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that approves the relief under sections 6.02 and 6.03 of this revenue procedure must report to the Service the Projects granted relief by attaching the documentation required in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that received the Agency's approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

SECTION 8. RECAPTURE RELIEF

.01 In general, under § 42(j)(1), if (1) a building is beyond the first year of the credit period, and (2) at the end of the taxable year, the building's qualified basis with respect to the taxpayer is less than the qualified basis with respect to the taxpayer at the end of the preceding taxable year, then the credits, if any,

for the year of the reduction are determined using the reduced qualified basis, and the taxpayer's Federal income tax liability for the year of the reduction is increased by the credit recapture amount prescribed in § 42(j)(2).

.02 If the building's qualified basis is reduced by reason of a casualty loss, then under § 42(j)(4)(E), a building is not subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period. The Agency must determine what constitutes a reasonable restoration period in the case of a Major Disaster that causes a reduction in qualified basis that would result in recapture or loss of credit. The reasonable restoration period established by the Agency must not extend beyond the end of the 25 th month following the close of the month of the Major Disaster declaration.

.03 To determine the credit amount allowable during the reasonable restoration period for a building described in section 8.02 of this revenue procedure, an Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period for the Major Disaster.

.04 If the Owner fails to restore the building within the reasonable restoration period determined by the Agency, then section 8.01 of this revenue procedure applies to the Owner and section 8.03 of this revenue procedure does not apply. The credit amount allowable, if any, after the Major Disaster is determined using the building's qualified basis at the end of each year of the credit period.

.05 Section 1.42–5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency. This requirement applies regardless of whether an Owner obtains the relief provided in section 8.02 of this revenue procedure.

.06 As part of its review procedure adopted under § 1.42–5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within the reasonable restoration period.

SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of the building's restoration and placement again into service.

.02 The extension permitted under section 9.01 of this revenue procedure does not extend the compliance monitoring deadlines for Owners in Major Disaster Areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a Major Disaster, the Agency must report the noncompliance on Form 8823 and describe how the Major Disaster contributed to the noncompliance.

SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings during the first year of the credit period that are severely damaged or destroyed in a Major Disaster Area, or uninhabitable as a result of a Major Disaster, an Agency has the discretion to treat the allocation as a returned credit to the Agency in accordance with the requirements of § 1.42–14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling period must not extend beyond the end of the 25 th month following the close of the month of the Major Disaster declaration. Owners may not claim any low-income housing credit during the restoration period of these first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those Projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 *No additional credit for restoration expenditures* . If a Major Disaster causes a building to suffer a reduction in qualified basis as described in section 8.01 of this revenue procedure in a taxable year during the compliance period, then § 42 does not allow the Owner to receive any additional credit amounts for costs to restore the building's qualified basis.

.02 *Additional credits allowed for rehabilitation expenditures* . As a result of either an allocation by an Agency or financing by exempt facility bonds, an Owner may receive an additional amount of credits for rehabilitation expenditures (as described in § 42(e)(2)) if those expenditures are used for rehabilitation and not for restoring qualified basis. A taxpayer may treat as rehabilitation expenditures any expenditures that are described in § 42(e)(2) and that exceed the amount expended for restoration. The amount expended for restoration is generally determined under all of the relevant facts and circumstances. However, if a Major Disaster causes a reduction in qualified basis, the Owner may alternatively treat as restoration expenditures the amount of—

(1) The building's eligible basis immediately before the Major Disaster; multiplied by

(2) The excess, if any, of—

a. 1.0 over

b. The fraction whose numerator is the building's post-Major Disaster qualified basis (determined for this purpose immediately after the Major Disaster) and whose denominator is the building's pre-Major Disaster qualified basis (determined for this purpose immediately before the Major Disaster).

.03 *Example* .

(a) *Facts* . Immediately before the Major Disaster described below, a low-income building contained 60 Market-Rate Units and 40 low-income units. Thus, the unit fraction under § 42(c)(1)(C) was 40/100. The eligible basis of the building was $10,000,000. Based on the unit fraction, the qualified basis was $4,000,000, which is the unit fraction multiplied by the eligible basis. A Major Disaster rendered 10 of the low-income units and several of the Market-Rate Units uninhabitable and damaged some building common areas. As a result of this damage to the common areas and to the residential units, the building's eligible basis was reduced to $8,500,000. Thus, immediately after the Major Disaster, the qualified basis is $2,550,000, which is the unit fraction of 30/100 (the unit fraction immediately after the Major Disaster), multiplied by $8,500,000 (the eligible basis at that time).

(b) *Analysis* . Under section 11.02(2) of this revenue procedure, the restoration amount is $3,625,000, and the building owner may treat any amount expended in excess of the restoration amount as rehabilitation expenditures (assuming the requirements of § 42(e) are met). The restoration amount is derived as the amount of—

a. $10,000,000, which is the building's eligible basis immediately before the Major Disaster; multiplied by

b. 0.3625, which is the excess of—

i. 1.0 over

ii. 0.6375, which is the fraction whose numerator is $2,550,000 (the qualified basis immediately after the Major Disaster) and whose denominator is $4,000,000 (the qualified basis immediately before the Major Disaster).

SECTION 12. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 *Requirements for Relief*. For an Owner to use the relief provided in section 13 of this revenue procedure, the conditions in this section 12 must be satisfied.

.02 *Agency Approval.*

(1) The Agency provides written approval to the Owner for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) For low-income buildings financed with exempt facility bonds under § 142, see section 5.02 of Rev. Proc. 2014–50, I.R.B. 2014–37.

.03 *Protection of Existing Tenants* . No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 42(g)(2) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.

.04 *Recordkeeping Requirements* . The Owner complies with the recordkeeping requirements in section 14 of this revenue procedure.

.05 *Rent Restrictions* . Gross rents for the low-income units that house Displaced Individuals do not exceed the maximum gross rent for those units that would apply under § 42(g)(2).

.06 *Project Meets All Remaining Requirements.* Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of § 42.

SECTION 13. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 *Discretion to Apply Relief*.

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Owner chooses not to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure, then all of the rules under § 42 apply.

(2) If an Owner chooses to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure then–

(A) The Owner may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a low-income tenant applying all the rules under § 42 or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure.

.02 *Satisfaction of the Non-Transient Use Requirement* . The occupancy of a unit in a Project by a Displaced Individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement under § 42(i)(3)(B)(i).

.03 *Treatment of Displaced Individuals Under the Next-Available-Unit Rule* . During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under § 42(g)(2)(D)(ii), an Owner disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals.

.04 *Treatment of Units in the First Year of the Credit Period* . If a Displaced Individual begins occupancy of a unit at a time that is within both the Temporary Housing Period and the first year of the credit period under § 42(f)(1), then during the Temporary Housing Period, while occupied by the Displaced Individual, the unit is treated as a low-income unit for the following purposes:

(1) Determining the Project's qualified basis under § 42(c)(1); and

(2) Meeting the Project's 20–50 test under § 42(g)(1)(A), 40–60 test under § 42(g)(1)(B), or 25–60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable. See section 13.06 of this revenue procedure for the treatment of a unit vacated by a Displaced Individual.

.05 *Treatment of Units After the First Year of the Credit Period* . If a Displaced Individual begins occupancy of a unit during the Temporary Housing Period but after the first year of the credit period under § 42(f)(1), then the unit retains the status it had immediately before that occupancy. That is–

(1) The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 42;

(2) If a unit is a low-income unit, a Market-Rate Unit, or a unit never previously occupied, then the unit remains as such while occupied by a Displaced Individual during the Temporary Housing Period, regardless of the occupancy by, or income of, the Displaced Individual; and

(3) The income of the Displaced Individual occupying the unit does not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor

does it affect the satisfaction of the 20–50 test under § 42(g)(1)(A), 40–60 test under § 42(g)(1)(B), or 25 –60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable.

.06 *Treatment of a Unit Vacated by a Displaced Individual* . If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under sections 13.04 or 13.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 13.04 or 13.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 42.

.07 *Income Qualifications when Temporary Housing Period Ends* .

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 13.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are reevaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 42(g)(1) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 42 as permitted by section 13.01(2)(B) of this revenue procedure, then all the rules under § 42 apply to the Displaced Individual, including § 42(g)(2)(D)(ii).

.08 *No Recapture* . The emergency housing of Displaced Individuals in low-income units during the Temporary Housing Period (and, if applicable, the 60-day correction period under section 13.07 under this revenue procedure) does not cause the building to suffer a reduction in qualified basis (which would cause the recapture of low-income housing credits).

SECTION 14. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Owners must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 12 and 13 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Owner must maintain a record both of the Agency's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Owner must report to the Agency at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Owner must also provide any dates Displaced Individuals ceased occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Owner must maintain the records described in this section as part of the annual compliance monitoring process with the Agency imposed by § 42 and provide this information to the Service upon request.

SECTION 15. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2007–54, 2007–2 C.B. 293.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

SECTION 17. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2237.

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 6, 7, 8, 9, 10, 12, 13, and 14. This information is required to enable the Service to verify whether the Owners and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 1,750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3,500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 18. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig at (202) 317-4137 (not a toll free number).

First hit Next document Previous document Back to results New search

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EXHIBIT B

Relevant pages of the Construction Contract

Project Name: HighPoint Family
Location: Dallas, Texas
Name and Address of Project Architect: Galier Tolson French Design Associates
2344 Highway 121, Suite 100
Bedford, Texas 76021

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT ("Agreement") is made and entered into at Dallas Texas, effective as of the Sixteenth day of May, 2014 by and between Central Dallas Community Development Corporation, a Texas tax-exempt corporation, whose address is 511 N. Akard Street, Suite 301, Dallas, Texas 75201, and ALTA Construction Management, LLC., whose address is 4805 Keller Springs Rd, Addison, TX 75001 [authorized to do business in Texas] ("Subcontractor").

WHEREAS, Contractor has entered into an AIA construction contract (the "Prime Contract") with Wynnewood Family Housing, LP, a Texas limited partnership whose address is Bank of America Tower, 20th Floor, Dallas, Texas 75202-3714 ("Owner"), a copy of which Prime Contract is attached hereto as Exhibit D and made a part hereof, for the construction of a 161-unit apartment project, plus a clubhouse building and parking garage, (the "Project") in Dallas, Texas, with each unit being referred to herein as a "Unit" and each building referred to herein as a "Building;" and

WHEREAS, Subcontractor has experience in the construction of projects similar to the Project, and is capable of constructing the Project for Contractor; and

WHEREAS, Contractor desires to retain Subcontractor to perform the construction of the Project on the same terms and conditions as set forth in the Prime Contract; and

WHEREAS, Contractor has obtained, or will obtain prior to the purchase of any materials by Contractor under the Prime Contract or by Subcontractor under this Agreement, an exemption from Texas sales and use taxes from the Texas Comptroller of Public Accounts.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor and Subcontractor agree as follows:

1. Subcontract Documents. The Subcontract Documents shall consist of this Agreement, the Prime Contract and the other Contract Documents referred to therein, modifications to the Prime Contract agreed to between Owner and Contractor with the consent of Subcontractor, and any modifications to this Agreement agreed to by Contractor and Subcontractor. Copies of all change orders or other modifications to the Prime Contract shall be delivered to Subcontractor for its approval before such changes become binding upon Subcontractor. The cost to Contractor of Change Orders shall be equal to the actual cost to Subcontractor of such Work plus 5% Overhead and 8% Profit. Capitalized terms used herein

shall have the meaning set forth in this Agreement or, if not set forth herein, the meanings set forth in the Prime Contract.

2. Engagement of Subcontractor. Contractor hereby engages Subcontractor to perform all of the Work required to be performed by Contractor under the Prime Contract with respect to the Project, including without limitation, the provision of all labor and materials required under the Prime Contract. Contractor hereby assumes toward Subcontractor all obligations and responsibilities that the Owner and the Architect, under the Prime Contract and Contract Documents, owes and assumes toward the Contractor, all such obligations and responsibilities under the Prime Contract and Contract Documents being incorporated herein by reference. Subcontractor hereby assumes toward Contractor all obligations and responsibilities which the Contractor, under the Prime Contract and Contract Documents, owes and assumes toward Owner and the Architect, all such obligations and responsibilities under the Prime Contract and Contract Documents being incorporated herein by reference. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under the Prime Contract and Contract Documents, has against the Contractor, all such rights and remedies under the Prime Contract and Contract Documents being incorporated herein by reference. Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under the Prime Contract and Contract Documents, has against the Owner, all such rights and remedies under the Prime Contract and Contract Documents being incorporated herein by reference and Subcontractor may enforce those rights, remedies and redress directly against the Owner. Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of construction of the Work. In no event will the failure of Contractor to perform any obligation of Contractor under this Agreement constitute a breach of this Agreement if such failure is the result of Owner's failure to perform Owner's obligations under the Prime Contract, provided however, that if an Owner Default exists, Contractor agrees to either (a) diligently pursue all rights and remedies against Owner with respect to the Owner Default or (b) appoint Subcontractor as Contractor's attorney-in-fact to pursue all such rights and remedies on behalf of Contractor against owner with respect to the Owner Default. Any failure by Contractor to perform as required by clauses (a) and (b) above of this Section 2 shall be a breach of this Subcontract.

3. Right to Further Subcontract the Work. Subcontractor shall have the right to enter into agreements with sub-subcontractors and material suppliers to perform all or any portion of the Work of the Project, and such sub-subcontractors and material suppliers may acquire materials for resale to Subcontractor to be used or incorporated in the Project.

4. Commencement and Completion of the Work. Subcontractor shall commence the Work at such time as all conditions to commencement of the work under the Prime Contract have been satisfied and Contractor is obligated to commence its Work. Subcontractor shall substantially complete the Work according to the construction schedule set forth in the Prime Contract, "Substantial Completion" shall be determined on the basis set forth in the Prime Contract. The parties agree that delays in the completion of the Work beyond the dates specified in the Construction Schedule set forth in the Prime Contract would result in the loss of certain economic and tax benefits to Owner and its partners which would be extremely difficult and impracticable to fix or ascertain under presently known and anticipated facts and

provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

In claims against any person or entity indemnified under this section by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

NOTWITHSTANDING ANYTHING IN THE CONTRACT DOCUMENTS TO THE CONTRARY, IN THE EVENT THIS CONTRACT RELATES TO A PROJECT OTHER THAN A SINGLE FAMILY HOUSE, TOWNHOUSE, DUPLEX, OR LAND DEVELOPMENT DIRECTLY RELATED THERETO OR A PUBLIC WORKS PROJECT OF A MUNICIPALITY THEN THE INDEMNITY PROVISIONS INCLUDED HEREIN SHALL BE LIMITED SUCH THAT SUBCONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR DEFEND CONTRACTOR OR ANY THIRD PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER EXCEPT THAT SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITIEES SET FORTH HEREIN AGAINST ANY CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS , OR ITS SUBCONTRACTORS OF ANY TIER.

IN WITNESS WHEREOF, the parties have executed this Agreement at the place and as of the date set forth on the first page hereof.

CONTRACTOR:	SUBCONTRACTOR:
Central Dallas Community Development Corporation.	ALTA Construction Management, LLC
A Texas Tax-Exempt Corporation	A Texas corporation
By: [signature]	By: [signature]
	Eric McMillan / President Alta Construction Management, LLC

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Sixteenth day of May in the year Two Thousand Fourteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Wynnewood Family Housing, LP
901 Main St.
Bank of America Tower
20th Floor
Dallas, TX 75202-3714

and the Contractor:
(Name, legal status, address and other information)

Central Dallas Community Development Corporation
511 N. Akard St., Ste. 301
Dallas, Texas 75201

for the following Project:
(Name, location and detailed description)

HighPoint Family Housing
The Work is located on approximately 3.982 acres along Zang Boulevard at the intersection of W. Louisiana Avenue in Dallas, TX.
The Work is to construct 161 family housing apartments with related amenity and support per the Contract Documents.

The Architect:
(Name, legal status, address and other information)

Galier Tolson French
2344 Highway 121, Suit e100
Bedford, TX 76021
Telephone Number: (817) 514-0584
Email: marc@gtfdesign.com

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed in a notice to proceed.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Four hundred eighty-eight (488) days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Reference Exhibit B Prime Subcontractor's Construction Schedule

Portion of Work	Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

Should Substantial Completion of the Work occur after the expiration of the Contract time, the Contractor shall be liable for and pay to Owner the sum of Five Hundred and no/100 Dollars ($500.00) per calendar day up to thirty (30) calendar days, and One Thousand and no/100 Dollars ($1,000.00) per calendar day thereafter beginning on the thirty-first (31st) calendar day after the Contract Time has expired for each calendar day that Substantial Completion of the Work is delayed beyond the Contract Time (or any extensions(s) thereof to which Contractor is entitled under the terms and provisions or any Change Order approved by Owner and the Architect), as liquidated damages.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

Four Hundred Ninety-One Thousand Nine Hundred Forty-Six Dollars ($491,946)

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

Five Percent (5%) for Fee and Eight (8%) for Overhead.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
Title of Drawings exhibit: HighPoint Family Permit Set dated February 14, 2014
Addendum One dated March 03, 2014

Number	Title	Date

§ 16.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A Prime Subcontractor's Detail Estimate 4/4/2014
Exhibit B Prime Subcontractor's Construction Schedule 5/9/2014
Exhibit C Contractor's Sales and Use Tax Exemption Certificate

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount ($0.00)

This Agreement entered into as of the day and year first written above.

[signature]
OWNER *(Signature)*

Brian L. Roop
(Printed name and title)
Authorized Representative
Wyandotte Family Housing, L.P.

[signature]
CONTRACTOR *(Signature)*

John Greenan, Executive Director
(Printed name and title)

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User Notes:

EXHIBIT C

Notice to Proceed dated July 8, 2014

Eric McMillen
ALTA Construction Management, LLC
4813 Keller Springs Rd
Addison, Texas 75001

July 08, 2014

Re: Wynnewood/HighPoint Family Housing
Notice to Proceed

Via: Electronic Delivery

Dear Mr. McMillen:

On behalf of the Owner, Wynnewood Family Housing, LP, and Central Dallas Community Development Corporation we are pleased to issue to you this Official Notice To Proceed for the above referenced project effective today.

We look forward to successful project with ALTA Construction Management, LLC.

Sincerely,
Design and Construction Solutions, LLC

Matthew D. Blaxton

Cc: Brian Roop, Darren Smith, John Pool, John Greenan, File

EXHIBIT D

ALTA Construction Management, LLC Weather Tracking Report

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Sep-14

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain											1.2"	1.1"			1.3"		1.2"														
Mud											hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	hlt	ham ham ham									
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 11 for September 2014

Requested days Extension 8 for September 2014

Project Superintendent Tom Persinger **Date Submitted to Client** 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Oct-14

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain		1.0"				.8"					1.1"		2.3"																		
Mud		HLT	HLT	HLT	HLT	HLT	HLT	HLT	HAM	HAM	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HAM	HAM												
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 5 Total Days lost due to weather 14 for October 2014

Requested days Extension 9 for October 2014

Project Superintendent Tom Persinger **Date Submitted to Client** 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: November

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain				1.2"	.8"											.2"						.4"	.2"								
Mud				HLT	HLT	HLT	HLT	HLT	HLT	HAM						HLT	HLT	HAM				HLT	HLT	HLT	HAM						
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 11 for November

Requested days Extension 8 for November 2014

Project Superintendent Tom Persinger Date Submitted to Client 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Dec-14

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain														.3"			.2"	.2"	.2"				.5"			.2"					
Mud														HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT	HLT			
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3   Total Days lost due to weather 15 for December 2014

Requested days Extension 12 for December 2014

Project Superintendent Tom Persinger   Date Submitted to Client 1/23/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Jan-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain	1."	.5"	.5"								.3"										.7"	1.6"	1.3"								.7"
Mud	hlt	hlt	hlt	hlt	hlt	ham	ham	ham			hlt	hlt	hlt	ham	ham						hlt	hlt	hlt	hlt	hlt	hlt	ham	ham			hlt
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 2 Total Days lost due to weather 14 for January 2015

Requested days Extension 12 for January 2015

Project Superintendent Tom Persinger Date Submitted to Client 2/10/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Feb-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain					0.2"											0.2"	0.2"			0.2"		0.5"	0.5"	0.4"	0.3"			0.3"			
Mud	Halt	Halt	Hamp	Hamp	Halt	Halt	Halt	Hamp								Halt	Halt			Halt	halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt			
Sleet					Sleet & Ice	ice														Mix			Sleet & Ice	Ice	Sleet & Ice	ice	Sleet & Ice	Sleet & Ice			
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 16 for February 2015

Requested days Extension 13 for February 2015

Project Superintendent Tom Persinger Date Submitted to Client 3/3/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Mar-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain					0.5"				1.1"				0.7"					0.2"		0.6"	0.2"	1.2"				0.2"					
Mud	Halt	Halt	Hamp	Hamp	Halt	Halt	Halt	Hamp	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Hamp	Halt	Halt	Halt	halt	Halt	Halt	Halt	Hamp	Halt	Halt	Halt			
Sleet																															
Snow						Snow 0.5"	Snow 4"																								
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 23 for March 2015

Requested days Extension 19 for March 2015

Project Superintendent Tom Persinger **Date Submitted to Client** 4/3/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Apr-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain					1.3"	0.3"			0.2"								1.2"					0.2"	0.6"	0.4"	0.5"	0.2"	0.5"	1.2"			
Mud					Halt	Halt	Halt	Hamp	Halt	Halt	Hamp						Halt	Halt	Halt	Hamp		Halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Hamp	
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 16 for April 2015

Requested days Extension 12 for April 2015

Project Superintendent Tom Persinger Date Submitted to Client 4/29/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: May-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Rain						0.5"	0.4"	3.0"	0.5"	3.9"			1.4"		0.5"	0.4"
Mud						Halt	Halt	Halt	Halt	Halt	Halt	Hamp	Halt	Hamp	Halt	Halt
Sleet																
Snow																
Temperature Daily Low																
Temperature Daily High																
Heat Index																
Wind (over 20 mph)																

	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain	4.0"	0.8"		1.0"	1.6"		0.5"	0.3"	5.0"	0.6"	0.6"	2.2"	2.9"	2.3"	
Mud	Halt	Halt	Hamp	Halt	Halt	Hamp	Halt	Halt	Halt	Halt	Halt	Halt	Halt	Halt	
Sleet															
Snow															
Temperature Daily Low															
Temperature Daily High															
Heat Index															
Wind (over 20 mph)															

Alloted Weather Days per Contract 5 Total Days lost due to weather 20 for May 2015

Requested days Extension 15 for May 2015

Project Superintendent Tom Persinger **Date Submitted to Client** 6/1/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Jun-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain														2.0"	0.5"	0.3"	5.2"				0.5"					1.0"	0.3"			1.1"	
Mud														Halt	Halt	Halt	Halt	Halt	Halt	Hamp	Halt	Halt	Hamp			Halt	Halt	Halt		Halt	Hamp
Sleet																															
Snow																															
Temperature Daily Low																															
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 — Total Days lost due to weather 12 for June 2015

Requested days Extension 8 for June 2015

Project Superintendent Tom Persinger — Date Submitted to Client 7/1/2015

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Jul-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain																															
Mud	X																														
Sleet																															
Snow																															
Temperature Daily Low	96	90	82	90		82	81	78	87	90	90		99	99	97	97	99	100	103	98	97	97	99	99	100	99	100	100	100	102	
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 3 Total Days lost due to weather 0 for July

Requested days Extension 0 for July 2015

Project Superintendent Thomas Persinger **Date Submitted to Client**

Alta Construction Management, LLC

Weather Tracking

High Point Family Housing

Month: Aug-15

Check boxes where weather was present. Note if work was Halted or Hampered.
Record daily temperature, inches of rain or snow, and excessive muddy conditions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Rain											0.8"																				
Mud																															
Sleet																															
Snow																															
Temperature Daily Low	100	--	88	81	98	102	101	100	--	105	103	102	100	99	98	--	98	101	98	82	94	98	--	98	98	98	99	104	98		
Temperature Daily High																															
Heat Index																															
Wind (over 20 mph)																															

Alloted Weather Days per Contract 4 Total Days lost due to weather 0 for August 2015

Requested days Extension 0 for August 2015

Project Superintendent Tom Persinger Date Submitted to Client 9/1/2015

EXHIBIT E

Initial Notice and Amendments 3, 6 and 9

Disaster Federal Register Notices: Texas Severe Storms, Tornadoes, Straight-line Winds, and Flooding

Initial Notice

DATE OF NOTICE: FRIDAY, MAY 29, 2015

Amendment No. 1

DATE OF NOTICE: FRIDAY, JUNE 5, 2015

Amendment No. 2

DATE OF NOTICE: TUESDAY, JUNE 9, 2015

Amendment No. 3

DATE OF NOTICE: TUESDAY, JUNE 16, 2015

Amendment No. 4

DATE OF NOTICE: FRIDAY, JUNE 19, 2015

Amendment No. 5

DATE OF NOTICE: WEDNESDAY, JUNE 24, 2015

Amendment No. 6

DATE OF NOTICE: WEDNESDAY, JULY 1, 2015

Amendment No. 7

DATE OF NOTICE: THURSDAY, JULY 9, 2015

Amendment No. 8

DATE OF NOTICE: FRIDAY, JULY 17, 2015

Amendment No. 10

DATE OF NOTICE: TUESDAY, JULY 21, 2015

Amendment No. 9

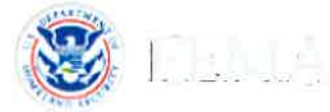
DATE OF NOTICE: TUESDAY, JULY 21, 2015

Amendment No. 11

DATE OF NOTICE: THURSDAY, JULY 23, 2015

Amendment No. 12

DATE OF NOTICE: TUESDAY, AUGUST 4, 2015



Initial Notice

Date of Notice:

Friday, May 29, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.

EFFECTIVE DATE: May 29, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

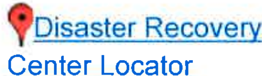
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 29, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.



Center Locator

I have determined that the damage in certain areas of the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

T[illegible] Federal Emergency Management Agency (F[illegible] [illegible] notice that pursuant to the au[illegible] vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

> Harris, Hays, and Van Zandt Counties for Individual Assistance.
>
> Cooke, Gaines, Grimes, Harris, Hays, Navarro, and Van Zandt Counties for Public Assistance.
>
> All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

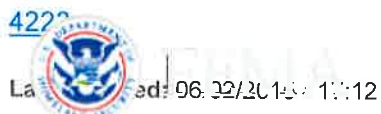
The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.



Amendment No. 3

Date of Notice:

Tuesday, June 16, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated

May 29, 2015, and related determinations.

EFFECTIVE DATE: June 16, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.

Disaster Recovery Center Locator

affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

> Dallas and Nueces Counties for Individual Assistance.
>
> Cooke, Fannin, Grayson, Liberty, and Walker Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

4223

Last Updated: 06/16/2015 - 17:12

Amendment No. 6

Date of Notice:
Wednesday, July 1, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated

May 29, 2015, and related determinations.

EFFECTIVE DATE: July 1, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.

Disaster Recovery Center Locator

affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

> Brazoria and Ellis Counties for Individual Assistance.
>
> Bowie, Cherokee, and Harrison Counties for Individual Assistance (already designated for Public Assistance).
>
> Callahan, Dickens, Edwards, Frio, Hartley, Hill, Leon, Parker, Real, Trinity, and Victoria Counties for Public Assistance.
>
> Dallas, Eastland, Hidalgo, and Nueces Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

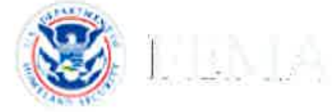
W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

4223

Last Updated: 07/01/2015 - 16:28



Amendment No. 9

Date of Notice:
Tuesday, July 21, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.

EFFECTIVE DATE: July 21, 2015

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period is now May 4, 2015, through and including June 22, 2015.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and

Assistance to State, Local, Tribal and Territorial Governments and Certain Private-Non-Profit Organizations

Contact your State or Tribal Emergency Management Office to learn more about the Public Assistance program.

Are you a disaster survivor?

Apply Online at DisasterAssistance.gov
Apply via a smartphone at m.fema.gov
Or apply by Phone by calling (800) 621-3362 or TTY (800) 462-7585.

Disaster Recovery Center Locator

drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

4223

Last Updated: 07/21/2015 - 13:55

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for The Cottages of South Acres (HTC # 13042).

RECOMMENDED ACTION

WHEREAS, Cottages at South Acres, Ltd. (Development Owner) was allocated $1,425,351 in 9% Housing Tax Credits in 2013 to construct The Cottages at South Acres (the "Development"), a development consisting of 144 new multifamily units in Houston;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement and Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49, allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President during the 2-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued and the notice was amended on Friday, June 5, 2015, and on Tuesday, June 9, 2015, to include Harris County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms and flooding between January and September of 2015 impacted construction crews on the Development and delayed construction progress for a total weather-related delay of 123 days (65 "rain" days and 58 "mud" days), which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a seven month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units the requested changes do not negatively affect the Development or impact the long term viability of the transaction and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49;

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a four month extension with the further authorization for the Executive Director to grant an additional two month extension of the placed in service deadline is hereby approved and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

The Cottages at South Acres was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 144 unit, general population, new construction property located in Houston. The Owner, Cottages at South Acres, Ltd. and its General Partner, KV Cottages, LLC, are owned and managed by VH Interest, Inc. and Marcialete Voller, LLC (a 50% HUB Member) and Barry Kahn and family members, 50% as joint Members.

The Owner, on September 21, 2015, submitted a letter to the Department requesting a seven month extension to the date the Owner is required to place each building in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Owner is seeking the relief under IRS Procedure Ruling 2007-54 (superseded and modified by IRS Procedure Ruling 2014-49) relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

According to the Owner, 123 total weather-related delays occurred between January 1, 2015 and September 15, 2015 (65 of which were related to rain and 58 of which were related to mud). The Owner's request states that an extraordinary amount of rainfall, 124% over the prior year and 47% over the average, with approximately 27 inches of rain falling during the months of March, April, and May, on the construction site delayed the Owner's ability to complete site work and carry out concrete operations. The Owner states that since the Development is comprised of 52 buildings located on 22 acres of land, the muddy conditions were very slow to dry and made the pouring of concrete virtually impossible. The Owner also identified other reasons for the delay in construction, including shortages of labor and materials due to the significant growth in Houston and new, more stringent Davis Bacon requirements related to the local City of Houston HOME funds. While the delays experienced as a result of these latter reasons are not directly related to the disaster experienced in the Houston area, they were exacerbated by the weather related delays.

The latest Construction Status Report submitted to the Department on October 12, 2015, reports that construction is approximately 43% complete. A field observation was conducted on the Development site on September 21, 2015 and the construction project manager confirmed the delays related to weather, citing approximately 55 days lost due to consistent rainfall. According to the field observation report, a schematic construction schedule indicated a commencement date of September 2014 and a completion date of December 2015 (approximately 16 months). However, the project manager indicated a four month delay in the construction schedule as of the date of the field observation, moving the anticipated completion date from December 2015 to April 2016.

The Development Owner has discussed that the development team is working diligently to make up any lost time and complete all units by April/May 2016, but with the impact of the noted delays, the Owner wishes

to ensure that the Owner has sufficient time to complete the housing. As an alternative to an approval of this extension request, the Owner has requested to be permitted to return the credits and receive a re-allocation of credits in the current year pursuant to the Force Majeure provisions in 10 TAC §11.6(5) of the 2015 Qualified Allocation Plan. The Owner has stated the belief that the Development meets all of the requirements of 10 TAC §11.6(5).

The Owner has referred in the request to the FEMA Notices of Major Disaster Declaration released on May 29, 2015 as well as the amended notices released on June 5, 2015, and June 9, 2015, that confirm the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015 and continuing under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Harris County is listed on the declaration as a county designated by FEMA for Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Ruling for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Procedure Ruling 2014-49, Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure Ruling, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The Department's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610, due to the IRS on February 28th.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC § 10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC § 10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request, as presented herein.

4942

COTTAGES AT SOUTH ACRES, LTD.

September 21, 2015

Mr. Tom Gouris
Deputy Executive Director for Housing Programs
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Cottages at South Acres in Harris County, Texas (the "**Development**")
TDHCA No. 13042

Dear Mr. Gouris:

The undersigned is the managing member of the general partner of Cottages at South Acres, Ltd. ("**Owner**"), which received an allocation of low-income housing tax credits ("**Tax Credits**") from the Texas Department of Housing and Community Affairs ("**TDHCA**") for the construction of the Development. Pursuant to Section 42(h)(1)(E)(i) of the Internal Revenue Code, Owner is required to place the Development in service by December 31, 2015; however, due to the reasons set forth below, we are submitting this request for an extension of the deadline to place the Development in service to July 31, 2016.

The Development, which is comprised of 52 buildings, is the third phase of a very successful and award winning development located in Sunnyside, an area in Houston. The immediate area, together with the City of Houston, has welcomed the development and been extremely supportive. Very strong preleasing for this third phase is evidence of the need for this type of housing in this area of Houston.

Owner is requesting the extension because construction of the Development was materially and adversely affected by (i) significant and unusual rainfall and flooding in the Houston area and in particular the Houston Hobby area in which the Development is located; (ii) shortages of labor due to the large amount of construction in the Houston area; (iii) shortages of concrete, again due to the large amount of construction, as well as the limited number of days subcontractors could deliver concrete excessive due rain in the Houston Hobby area; and (iv) revised and more stringent requirements under Section 3 of the Housing and Urban Development Act of 1968 ("**Section 3**"), and slow permitting in Houston.

Rainfall, Flooding, and PDDA: Houston received an extraordinary amount of rainfall earlier this year. Over 56 inches of rain fell in the Houston Hobby area between January 1, 2015 and September 15, 2015, which is 124% over the prior year and 47% over the average. Attached as Exhibit A is a schedule of days the Development was impacted by rain. The months of March, April, and May 2015 were particularly bad with approximately 27 inches of rain falling during these three months alone, which caused flooding. Since the Development is comprised of 52 buildings located on 22 acres of land, the muddy conditions were very slow to dry, making the pouring of concrete virtually impossible.

On May 29, 2015 President Obama declared the Houston/Harris County a Presidentially Declared Disaster Area (FEMA-4223-DR) ("**PDDA**"), based on the extraordinary "severe storms, tornadoes, straight-line winds, and flooding."

Shortages in Labor and Material. As all are aware, Houston has been experiencing a significant amount of growth and new development, which has in turn resulted in labor and material shortages. At the beginning of 2015, there were approximately 30,000 new multifamily units under construction or under design to commence construction in 2015, and 18,000,000 square feet of new office space either started or planned for 2015. These statistics do not include hotels and retail, both of which are also experiencing substantial growth and all of which puts increased demand on labor and materials. With all of the construction, shortages have arisen for materials, particularly concrete, which has been rationed in a manner in which Developments were limited to one or two loads or partial loads per week. Consequently, if a Development missed its day to receive concrete due to rain or soaked conditions, the entire week would be lost, and since it rained weekly for three months, significant delays occurred.

Davis Bacon and Section 3. The City of Houston was very supportive of the Development, evidenced by is contribution of over $3,000,000.00 of HOME funds to ensure the Development's success. Because of the HOME funds, the Development is subject to the requirements of the Davis Bacon Act and the new, more stringent, Section 3 requirements. Qualified subcontractors are familiar with the Davis Bacon Act, but few are familiar with Section 3, or they are they have had challenges with meeting the new Section 3 requirements. Many, once they become aware of the standards they must meet, simply refuse to proceed. With all the market-rate construction work, most subcontractors do not want to deal with the additional paper work and liabilities of Section 3, as now enforced, which adds additional pressures to the otherwise limited labor supply. It should be noted that the contractor has experience managing the construction of large sites, including one of 27 acres with 114 buildings and another one of 24 acres with 120 buildings (which was also subject to Davis Bacon and Section 3 requirements), so the size of the site and number of buildings has not been an issue, except to the extent impacted by the excessive rains and concrete shortages.

So, with unprecedented heavy rain, labor shortages, concrete shortages, and the implementation of new Section 3 requirements, construction of the Development has moved uncharacteristically slowly and is substantially behind schedule. This is notwithstanding the fact that the prior owner began clearing the land prior to Owner's purchase of the land, and that construction commenced in early September, which, based on past history, should have provided more than sufficient time to complete construction.

Currently, there are some slabs that remain to be poured. We anticipate having at least 30+ units available in December, subject to timely installations by the utility companies and the receipt of the necessary approvals from inspectors, all of which are behind schedule. All units are expected to be completed by April/May 2016, which is why and Owner is seeking an extension based upon the PDDA until July 31, 2016. This will provide sufficient time to complete the Development, and provides additional time for any further unforeseen delays. This request is submitted, and may be granted by TDHCA, pursuant to Rev. Proc. 2007-54. Section 5.03 of the Revenue Procedure states:

> If an Owner has a carryover allocation for a building located in a major disaster area and the area is declared a major disaster area during the 2-year period described in §42(h)(1)(E)(i), the [Internal Revenue] Service will treat the Owner as having satisfied the applicable placed in service requirement if the Owner places the building in service no later than December 31 of the year following the end of the 2-year period.

In the alternative, we request that Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2015 Qualified Allocation Plan (the "**QAP**"). We believe Owner and the Development meet all of the requirements of Section 11.6(5), in that:

1. The delays in construction were a direct result of significant weather events, changes in law, and labor and materials shortages.

2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.

3. Evidence of the excessive rainfall is attached as Exhibit A.

4. Owner and the contractor are experienced developers of these types of properties, and each took any steps available to them to mitigate the delays; however, the weather and shortages were not within their control.

5. Owner substantially fulfilled all of its obligations that were not impeded by the weather events; the Development was properly insured; and TDHCA was notified of the weather events, including an e.mail sent to Lucy Trevino on June 1, 2015.

6. The weather events, changes in law, and labor and materials shortages have prevented Owner from meeting the placement in service requirements of the original allocation.

7. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.

8. The Development continues to be financially viable.

Please feel free to contact me with any questions. We sincerely appreciate your assistance with this matter.

Very truly yours,

W. Barry Kahn

WBK/ad

Enclosure

cc: Richard Morrow
Locke Lord, LLP
600 Congress, Suite 2200
Austin, Texas 78701

EXHIBIT A

(Attached)

Cottages at South Acres - Construction Days Lost due to Rain / Wet Conditions

	Rain Dates (not including Sundays or Holidays)	Additional Days lost due to Wet Conditions	Total
Sep-14	17th, 18th, 19th, 20th	22nd	**5**
Oct-14	2nd, 6th, 11th, 13th	3rd, 4th, 7th, 8th, 9th, 14th, 15th, 16th	**12**
Nov-14	5th, 21st, 22nd	6th, 17th, 18th, 19th, 20th, 24th, 25th	**10**
Dec-14	5th, 18th, 19th	22nd, 23rd	**5**
Jan-15	3rd, 8th, 9th, 10th, 12th, 22nd	13th, 14th, 23rd, 24th	**10**
Feb-15	16th, 17th, 21st	23rd, 24th	**5**
Mar-15	5th, 12th, 13th, 18th, 21st, 26th	2nd, 6th, 9th, 10th, 11th, 14th	**12**
Apr-15	8th, 13th, 16th, 17th, 18th, 24th, 25th	9th, 10th, 11th, 14th, 15th, 20th, 21st, 22nd, 23rd	**16**
May-15	6th, 11th, 12th, 13th, 15th, 20th, 21st, 25th, 26th, 27th, 28th, 29th, 30th	7th, 8th, 9th, 14th, 16th, 18th, 19th, 22nd, 22rd	**22**
Jun-15	13th, 16th, 17th, 30th	1st, 15th, 18th, 19th, 20th, 29th, 30th	**11**
Jul-15	1st	2nd	**2**
Aug-15	11th, 19th, 20th, 21st, 22nd, 25th, 26th	17th, 18th	**9**
*** Sept-15**	1st, 2nd, 10th, 11th		**4**
Total			**123**

* Through Setember 15th only

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for Villas of Vanston Park (HTC # 13044)

RECOMMENDED ACTION

WHEREAS, Vanston Park Investments, LP (the "Development Owner") was allocated $1,500,000 in 9% Housing Tax Credits in 2013 to construct Villas of Vanston Park (the "Development"), a development consisting of 155 new multifamily units in Mesquite in Dallas County;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2015 and required by Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2015;

WHEREAS, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the 2-year period described in §42(h)(1)(E)(i), as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the 2-year period;

WHEREAS, on Friday, May 29, 2015, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the excessive rain and flooding that ensued, and the notice was amended on Tuesday, June 16, 2015, and on Wednesday, July 1, 2015, to include Dallas County in a list of Texas counties eligible to receive individual and public assistance;

WHEREAS, the Owner has indicated that severe storms and flooding impacted construction crews on the Development during the construction phase and delayed construction progress, which has created overall delays in Development completion such that the Development may not be able to meet its December 31, 2015 deadline to place each building in service;

WHEREAS, the Owner is requesting disaster relief in the form of a six month extension to the Development's placed in service deadline of December 31, 2015;

WHEREAS, aside from delaying the availability of affordable units, the requested changes do not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(d), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that a three month extension with the further authorization for the Executive Director to grant an additional three month extension of the placed in service deadline is hereby approved, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Villas of Vanston Park was awarded credits in 2013 under the 9% Housing Tax Credit program. The property is a 155-unit, general population, new construction property located in Mesquite in Dallas County. The Owner, Vanston Park Investments, LP and its General Partner, Vanston Villas Development, LLC, are owned and managed by Sphinx Development Corporation, a Historically Underutilized Business (HUB). Sphinx Development Corporation is owned by Jay O. Oji and Joseph Agumadu.

On October 30, 2015, the Owner submitted a letter dated October 28, 2015 to the Department requesting a six-month extension to the date that the Owner is required to place each building and unit in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement, respectively. The Owner is seeking the relief under IRS Revenue Procedure 2014-49 relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President.

The letter from the Owner states that the development suffered four and a half months of construction delays due to inclement weather and flooding at the development site and surrounding area. The Owner indicated that the inclement weather and flooding caused construction delays in the relocation and placement of infrastructure and delays in the construction of the foundations. Construction daily logs submitted by the Owner indicate that there had been 69 days of rain or mud at the development site as of September 9, 2015.

A construction progress report dated January 14, 2015 from JHP, the architect, reflected an anticipated construction completion in October 2015. The construction progress report as of March 5, 2015 indicated that construction was three to four weeks behind schedule, and as of April 1, 2015, construction was four to six weeks behind schedule. The reports state that efforts were being made to make up time. By June 10, 2015, construction was 2½ to 3 months behind, but a completion of November 2015 was projected. The projected completion date changed to December 2015 by the report as of July 1, 2015, and this projected completion date continues to be reflected in the most recent report as of October 7, 2015. Based on the contractor's application for payment as of September 25, 2015, the project was estimated to be approximately 65% complete.

The Owner has submitted verification of the FEMA Notices of Major Disaster Declaration released on May 29, 2015 as well as the amended notice released on June 16, 2015 that confirm the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 4, 2015 and continuing under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Staff verified that the amended notices released on June 16, 2015, and July 1, 2015, included Dallas County as a county designated by FEMA for

Individual and Public Assistance under the President's disaster declarations and therefore meet the requirements of Section 4 of the Revenue Procedure for purposes of determining whether the Owner is eligible to request relief provisions.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The agency's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. In accordance with Section 7.02, the agency has the discretion to provide less than the full amount of relief allowed or no relief based on all the facts and circumstances. The Department will report any approved relief on the Form 8610 due to the IRS on February 28th.

The Owner has indicated that they are making all efforts to still meet the current deadline. Therefore, staff is recommending a three month extension with an additional three months to address any further delays as determined to be necessary by the Executive Director.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(d); however, extensions are only considered in this section if the original deadline associated with carryover, the 10 Percent Test, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline, and the Department's Carryover Allocation Agreement states that no extension of the deadline to place in service can be made. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(d), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension request, as presented herein.

SPHINX DEVELOPMENT CORPORATION &
VANSTON VILLAS DEVELOPMENT, LLC, AS GENERAL PARTNER OF
VANSTON PARK INVESTMENTS, L.P.
3030 LBJ Freeway, Suite 1350, Dallas, Texas 75234
Tel. (214) 342-1400 Fax (214) 342-1409
E-mail: jay@sdcus.com www.sdcus.com

October 28, 2015

Rosalio Banuelos, Senior Asset Manager
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701
Tel: 512-475-3357

Re: VILLAS OF VANSTON PARK TDHCA No.: 13044
4540 Gus Thomasson Road, Mesquite, Texas 75150
Extension of Placed-in-Serve Date

Dear Mr. Banuelos:

This letter is our formal request to you to extend the Placed-In-Service Date for the above referenced Partnership's development from December 31, 2015 until June 30, 2016.

The primary reason for this extension request is that this development suffered four and a half months (4 ½) construction delays due to Act of God being inclement weather and extensive flooding which occurred at the development site and surrounding area, the severity of which resulted in a declaration by the United States Government of the development site and surrounding area as a designated Federal Disaster Area ***(Exhibit "A" and "B")***.

The consequences of the inclement weather and flooding caused construction delays in several critical areas: delays in the relocation and placement of infrastructure utilities and delays in the construction of the development's foundations, thereby causing delays in the construction of all other structures ***(Exhibit "C").*** These delays now have affected the completion of the remainder of the development such that it necessitates our request for the extension of the Placed-In-Service Date. Attached you will find supplemental information and documentation regarding specific details of the delays caused by the stated Acts of God.

Please set our request for approval of this extension before the next TDHCA Board Meeting to occur on November 12, 2015. Let me know if you need any other additional information. Please also let us know if you require our presence at the Board meeting.

Thank you for your assistance.

Sincerely,

By: ______________________
Jay O. Oji, President & CEO

Exhibit

“A”

Initial Notice

Date of Notice:

Friday, May 29, 2015

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.

EFFECTIVE DATE: May 29, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 29, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

Amendment No. 3

Date of Notice:
Tuesday, June 16, 2015
Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4223-DR]

Docket ID FEMA-2015-0002

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4223-DR), dated May 29, 2015, and related determinations.

EFFECTIVE DATE: June 16, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 29, 2015.

Dallas and Nueces Counties for Individual Assistance.

Cooke, Fannin, Grayson, Liberty, and Walker Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

Last Updated: 06/16/2015 - 17:13

Texas – Severe Storms, Tornadoes, Straight-line Winds, and Flooding

FEMA-4223-DR

Declared May 29, 2015

On May 29, 2015, Governor Greg Abbott requested a major disaster declaration due to severe storms, tornadoes, straight-line winds, and flooding beginning on May 4, 2015, and continuing. The Governor requested a declaration for Individual Assistance for three counties, Public Assistance for seven counties, and Hazard Mitigation for the entire State of Texas. Beginning on May 21, 2015, and continuing, joint federal, state, and local government Preliminary Damage Assessments (PDAs) were conducted in the requested counties and are summarized below. PDAs estimate damages immediately after an event and are considered, along with several other factors, in determining whether a disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments, and that Federal assistance is necessary.[1]

On May 29, 2015, President Obama declared that a major disaster exists in the State of Texas. This declaration made Individual Assistance requested by the Governor available to affected individuals and households in Harris, Hays, and Van Zandt Counties. This declaration also made Public Assistance requested by the Governor available to state and eligible local governments and certain private nonprofit organizations on a cost-sharing basis for emergency work and the repair or replacement of facilities damaged by the severe storms, tornadoes, straight-line winds, and flooding in Cooke, Gaines, Grimes, Harris, Hays, Navarro, and Van Zandt Counties. Finally, this declaration made Hazard Mitigation Grant Program assistance requested by the Governor available for hazard mitigation measures statewide.[2]

Summary of Damage Assessment Information Used in Determining Whether to Declare a Major Disaster

Individual Assistance

- Total Number of Residences Impacted:[3] 2,082

Destroyed -	208
Major Damage -	752
Minor Damage -	653
Affected -	469

- Percentage of insured residences:[4] 28.10%
- Percentage of low income households:[5] 66.35%
- Percentage of elderly households:[6] 15.70%
- Total Individual Assistance cost estimate: $13,217,402

Public Assistance

- Primary Impact: Damage to roads and bridges
- Total Public Assistance cost estimate: $43,616,076
- Statewide per capita impact: [7] $1.74
- Statewide per capita impact indicator: [8] $1.41
- Countywide per capita impact: Cooke County ($141.62), Gaines County ($7.76), Grimes County ($49.32), Harris County ($4.47), Hays County ($31.86), Navarro County ($49.01), and Van Zandt County ($77.51).
- Countywide per capita impact indicator:[9] $3.56

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[1] The Preliminary Damage Assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and resulting needs of individuals, businesses, public sector, and community as a whole. Information collected is used by the State as a basis for the Governor's request for a major disaster or emergency declaration, and by the President in determining a response to the Governor's request (44 CFR § 206.33).

[2] When a Governor's request for major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act) is under review, a number of primary factors are considered to determine whether assistance is warranted. These factors are outlined in FEMA's regulations (44 CFR § 206.48). The President has ultimate discretion and decision making authority to declare major disasters and emergencies under the Stafford Act (42 U.S.C. § 5170 and § 5191).

[3] Degree of damage to impacted residences:

- Destroyed – total loss of structure, structure is not economically feasible to repair, or complete failure to major structural components (e.g., collapse of basement walls/foundation, walls or roof);
- Major Damage – substantial failure to structural elements of residence (e.g., walls, floors, foundation), or damage that will take more than 30 days to repair;
- Minor Damage – home is damaged and uninhabitable, but may be made habitable in short period of time with repairs; and
- Affected – some damage to the structure and contents, but still habitable.

[4] By law, Federal disaster assistance cannot duplicate insurance coverage (44 CFR § 206.48(b)(5)).

[5] Special populations, such as low-income, the elderly, or the unemployed may indicate a greater need for assistance (44 CFR § 206.48(b)(3)).

[6] Ibid (44 CFR § 206.48(b)(3)).

[7] Based on State population in the 2010 Census.

[8] Statewide Per Capita Impact Indicator for FY15, *Federal Register,* October 1, 2014.

[9] Countywide Per Capita Impact Indicator for FY15, *Federal Register,* October 1, 2014.

GOVERNOR GREG ABBOTT

June 18, 2015

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10:00A O'CLOCK
JUN 18 2015
Secretary of State

The Honorable Carlos Cascos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following proclamation:

> Amending his previous series of proclamations in May certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has now caused a disaster in 104 Texas counties.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

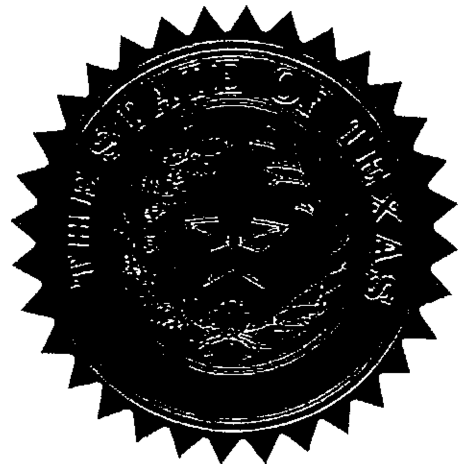
I, GREG ABBOTT, Governor of the State of Texas, issued Emergency Disaster Proclamations on May 11, May 15, May 25, May 26, May 29 and June 3, 2015, certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has caused a disaster in many Texas counties. Disaster conditions persist in many parts of the state.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby amend the aforementioned proclamations and declare a disaster in Angelina, Archer, Atascosa, Austin, Bastrop, Baylor, Bell, Blanco, Bosque, Bowie, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Callahan, Cass, Chambers, Cherokee, Clay, Collin, Comal, Comanche, Cooke, Dallas, Denton, Dewitt, Dickens, Eastland, Edwards, Ellis, Erath, Fannin, Fayette, Fort Bend, Frio, Gaines, Garza, Gillespie, Gonzales, Grayson, Grimes, Guadalupe, Harris, Harrison, Hartley, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Jack, Jasper, Johnson, Jones, Kaufman, Kendall, Lamar, Lee, Leon, Liberty, Lubbock, Lynn, Madison, Milam, Montague, Nacogdoches, Navarro, Newton, Nueces, Palo Pinto, Parker, Polk, Real, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Starr, Tarrant, Throckmorton, Travis, Trinity, Tyler, Uvalde, Van Zandt, Victoria, Walker, Waller, Wharton, Wichita, Williamson, Wilson, Wise, Young and Zavala counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



the City of Austin, Texas, this the 18th day of June, 2015.

GREG ABBOTT
Governor

ATTESTED BY:

CARLOS CASCOS
Secretary of State

GOVERNOR GREG ABBOTT

June 22, 2015

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9:30AM O'CLOCK
JUN 22 2015
Secretary of State

The Honorable Carlos Cascos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following proclamation:

> Amending his previous series of proclamations in May certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has now caused a disaster in 110 Texas counties.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued Emergency Disaster Proclamations on May 11, May 15, May 25, May 26, May 29, June 3 and June 18, 2015, certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has caused a disaster in many Texas counties. Disaster conditions persist in many parts of the state.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby amend the aforementioned proclamations and declare a disaster in Angelina, Archer, Atascosa, Austin, Bastrop, Baylor, Bell, Blanco, Bosque, Bowie, Brazoria, Brazos, Brown, Burleson, Caldwell, Calhoun, Callahan, Cass, Chambers, Cherokee, Clay, Collin, Comal, Comanche, Cooke, Dallas, Delta, Denton, Dewitt, Dickens, Eastland, Edwards, Ellis, Erath, Fannin, Fayette, Fort Bend, Frio, Gaines, Galveston, Garza, Gillespie, Gonzales, Grayson, Grimes, Guadalupe, Harris, Harrison, Hartley, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Jack, Jasper, Johnson, Jones, Kaufman, Kendall, Lamar, Lee, Leon, Liberty, Lubbock, Lynn, Madison, Milam, Montague, Montgomery, Nacogdoches, Navarro, Newton, Nueces, Orange, Palo Pinto, Parker, Polk, Real, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Starr, Tarrant, Throckmorton, Travis, Trinity, Tyler, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Wichita, Williamson, Wilson, Wise, Young and Zavala counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

the City of Austin, Texas, this the 22th day of June, 2015.

GREG ABBOTT
Governor

ATTESTED BY:

CARLOS CASCOS
Secretary of State

GOVERNOR GREG ABBOTT

July 22, 2015

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:30 AM O'CLOCK
JUL 22 2015
Secretary of State

The Honorable Carlos Cascos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Mr. Secretary:

Pursuant to his powers as Acting Governor of the State of Texas, Dan Patrick has issued the following proclamation:

> Amending a previous series of proclamations from May certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has now caused a disaster in 121 Texas counties.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, GREG ABBOTT, Governor of the State of Texas, issued Emergency Disaster Proclamations on May 11, May 15, May 25, May 26, May 29, June 3, June 18 and June 22, 2015, certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has caused a disaster in many Texas counties. Disaster conditions persist in many parts of the state.

THEREFORE, in accordance with the authority vested in me as the Acting Governor and by Section 418.014 of the Texas Government Code, I hereby amend the aforementioned proclamations and declare a disaster in Angelina, Archer, Atascosa, Austin, Bastrop, Baylor, Bell, Blanco, Bosque, Bowie, Brazoria, Brazos, Brown, Burleson, Caldwell, Calhoun, Callahan, Cass, Chambers, Cherokee, Clay, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Dallas, Delta, Denton, DeWitt, Dickens, Duval, Eastland, Edwards, Ellis, Erath, Fannin, Fayette, Fort Bend, Frio, Gaines, Galveston, Garza, Gillespie, Gonzales, Grayson, Grimes, Guadalupe, Hall, Hardin, Harris, Harrison, Hartley, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jim Wells, Johnson, Jones, Kaufman, Kendall, Lamar, Lee, Leon, Liberty, Lubbock, Lynn, Madison, Matagorda, McLennan, Milam, Montague, Montgomery, Nacogdoches, Navarro, Newton, Nueces, Orange, Palo Pinto, Parker, Polk, Real, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Starr, Tarrant, Throckmorton, Tom Green, Travis, Trinity, Tyler, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Wichita, Williamson, Wilson, Wise, Young and Zavala counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed

the City of Austin, Texas, this the 22nd day of July, 2015.

DAN PATRICK
Acting Governor

ATTESTED BY:

CARLOS CASCOS
Secretary of State

GOVERNOR GREG ABBOTT

July 30, 2015

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:45 PM O'CLOCK
JUL 30 2015
Secretary of State

The Honorable Carlos H. Cascos
Secretary of State
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2697

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following proclamation:

> Amending a previous series of proclamations from May certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has now caused a disaster in 122 Texas counties.

The original proclamation is attached to this letter of transmittal.

Sincerely,

Dede Keith
Deputy Director
Constituent Communication Division
Office of the Governor

DK:gdk

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued Emergency Disaster Proclamations on May 11, May 15, May 25, May 26, May 29, June 3, June 18, June 22 and July 22, 2015, certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has caused a disaster in many Texas counties. Disaster conditions persist in many parts of the state.

THEREFORE, in accordance with the authority vested in me as the Governor and by Section 418.014 of the Texas Government Code, I hereby amend the aforementioned proclamations and declare a disaster in Angelina, Archer, Atascosa, Austin, Bastrop, Baylor, Bell, Blanco, Bosque, Bowie, Brazoria, Brazos, Brown, Burleson, Caldwell, Calhoun, Callahan, Cass, Chambers, Cherokee, Clay, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Dallas, Delta, Denton, DeWitt, Dickens, Duval, Eastland, Edwards, Ellis, Erath, Fannin, Fayette, Fort Bend, Frio, Gaines, Galveston, Garza, Gillespie, Gonzales, Grayson, Grimes, Guadalupe, Hall, Hardin, Harris, Harrison, Hartley, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jim Wells, Johnson, Jones, Kaufman, Kendall, Lamar, Lee, Leon, Liberty, Lubbock, Lynn, Madison, Matagorda, McLennan, Milam, Montague, Montgomery, Nacogdoches, Navarro, Newton, Nueces, Orange, Palo Pinto, Parker, Polk, Real, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Starr, Tarrant, Throckmorton, Tom Green, Travis, Trinity, Tyler, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Wichita, Williamson, Wilson, Wise, Young and Zavala counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:45 PM O'CLOCK

JUL 30 2015

the City of Austin, Texas, this the 30th day of July, 2015.

GREG ABBOTT
Governor

ATTESTED BY:

CARLOS CASCOS
Secretary of State

FILED IN THE OFFICE OF THE SECRETARY OF STATE
4:45 pm O'CLOCK

JUL 30 2015

GOVERNOR GREG ABBOTT

May 26, 2015

FILED IN THE OFFICE OF THE SECRETARY OF STATE
2:30pm O'CLOCK
MAY 26 2015
Secretary of State

The Honorable Carlos Cascos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following proclamation:

> Amending his proclamation of May 11, 2015, to declare a disaster in Archer, Bastrop, Blanco, Bosque, Bowie, Caldwell, Cass, Clay, Collin, Comal, Cooke, Denton, Dewitt, Eastland, Fannin, Gaines, Garza, Grayson, Grimes, Guadalupe, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hood, Houston, Jasper, Johnson, Kendall, Montague, Navarro, Newton, Nueces, Parker, Red River, San Jacinto, Smith, Van Zandt, Walker, Wichita, Williamson, Wilson, Wise, an dZavala counties..

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued Emergency Disaster Proclamations on May 11, May 15 and May 25, 2015, certifying that the severe weather, tornado and flooding event that began on May 4, 2015, has caused a disaster in many Texas counties. Severe weather, tornadoes and flooding continue in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby amend my proclamations of May 11, May 15 and May 25, 2015, and declare a disaster in Archer, Bastrop, Blanco, Bosque, Bowie, Caldwell, Cass, Clay, Collin, Comal, Cooke, Denton, Dewitt, Eastland, Fannin, Gaines, Garza, Grayson, Grimes, Guadalupe, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hood, Houston, Jasper, Johnson, Kendall, Montague, Navarro, Newton, Nueces, Parker, Red River, San Jacinto, Smith, Van Zandt, Walker, Wichita, Williamson, Wilson, Wise, and Zavala counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of May, 2015.

Greg Abbott

GREG ABBOTT

Exhibit

“B”

Dallasdawg.com Weather

Rainfall Reports (in)

Report for Year 2015

Data last updated 10/28/15 3:30 PM.

Day	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	0.65	0.28	0.21	0.07	0.00	0.00	0.00	0.00	0.00	0.03	---	---
2	0.41	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	---	---
3	0.42	0.00	0.08	0.00	0.00	0.00	0.03	0.00	0.00	0.00	---	---
4	0.00	0.01	0.41	0.00	0.00	0.00	0.00	0.00	0.00	0.00	---	---
5	0.00	0.00	0.16	0.86	0.07	0.00	0.00	0.00	0.00	0.00	---	---
6	0.00	0.00	0.00	0.02	0.21	0.00	0.00	0.00	0.00	0.00	---	---
7	0.00	0.00	0.00	0.00	1.20	0.00	0.09	0.00	0.00	0.00	---	---
8	0.00	0.00	0.08	0.00	0.04	0.00	0.68	0.00	0.00	0.00	---	---
9	0.00	0.00	0.74	0.09	0.08	0.00	0.00	0.00	0.39	0.00	---	---
10	0.04	0.00	0.01	0.00	1.64	0.00	0.00	0.00	0.00	0.00	---	---
11	0.46	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	---	---
12	0.01	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.00	0.00	---	---
13	0.00	0.00	0.25	1.80	0.94	0.00	0.00	0.00	0.00	0.00	---	---
14	0.00	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.00	0.00	---	---
15	0.00	0.00	0.00	0.00	0.03	0.10	0.00	0.00	0.00	0.00	---	---
16	0.00	0.24	0.00	0.00	0.00	0.38	0.00	0.00	0.00	0.00	---	---
17	0.00	0.02	0.00	1.01	2.31	1.88	0.00	0.00	0.00	0.00	---	---
18	0.00	0.01	0.04	0.85	0.00	0.00	0.00	0.00	0.00	0.00	---	---
19	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.00	0.27	0.00	---	---
20	0.00	0.00	0.27	0.00	0.12	0.00	0.00	0.00	0.00	0.00	---	---
21	0.29	0.00	0.07	0.23	0.71	0.11	0.00	0.00	0.00	0.00	---	---
22	1.19	1.31	0.23	0.00	0.33	0.00	0.00	0.00	0.00	1.51	---	---
23	0.00	0.00	0.00	0.61	0.43	0.00	0.00	0.00	0.00	3.80	---	---
24	0.00	0.12	0.00	1.35	1.50	0.00	0.00	0.00	0.00	0.97	---	---
25	0.00	0.58	0.00	0.02	0.52	0.00	0.00	0.00	0.00	0.02	---	---
26	0.00	0.00	0.01	0.00	0.04	0.19	0.00	0.00	0.00	0.00	---	---
27	0.00	0.00	0.04	0.53	0.00	0.01	0.00	0.00	0.00	0.00	---	---
28	0.00	0.06	0.00	0.05	0.19	0.00	0.00	0.00	0.00	0.00	---	---
29	0.00		0.00	0.00	3.30	0.00	0.00	0.03	0.00	---	---	---
30	0.00		0.00	0.00	3.00	0.18	0.00	0.00	0.00	---	---	---
31	0.54		0.00		0.00		0.00	0.00		---		---
Rain Days	9	9	17	15	21	7	3	1	2	5	0	0
Mnth TTL	4.01 in	2.63 in	2.64 in	7.51 in	16.72 in	2.85 in	0.80 in	0.03 in	0.66 in	6.33 in	0.00 in	0.00 in
YTD TTL	4.01 in	6.64 in	9.28 in	16.79 in	33.51 in	36.36 in	37.16 in	37.19 in	37.85 in	44.18 in	44.18 in	44.18 in

Color Key

< 0.25	0.25 - 0.50	0.50 - 0.75	0.75 - 1.00	1.00 - 1.25	1.25 - 1.50	1.50 - 1.75	1.75 - 2.00	2.00 - 2.25	2.25 - 2.50	2.50 - 2.75	2.75 - 3.00	3.00>

Script Developed by www.TNETWeather.com. Modified by Murry Conarroe of Wildwood Weather <http://weather.wildwoodnaturist.com/>

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Never base important decisions on this or any weather information obtained from the Internet.

Weather History for KDFW - January, 2015

From:
January
1
2015
To:
October
28
2015

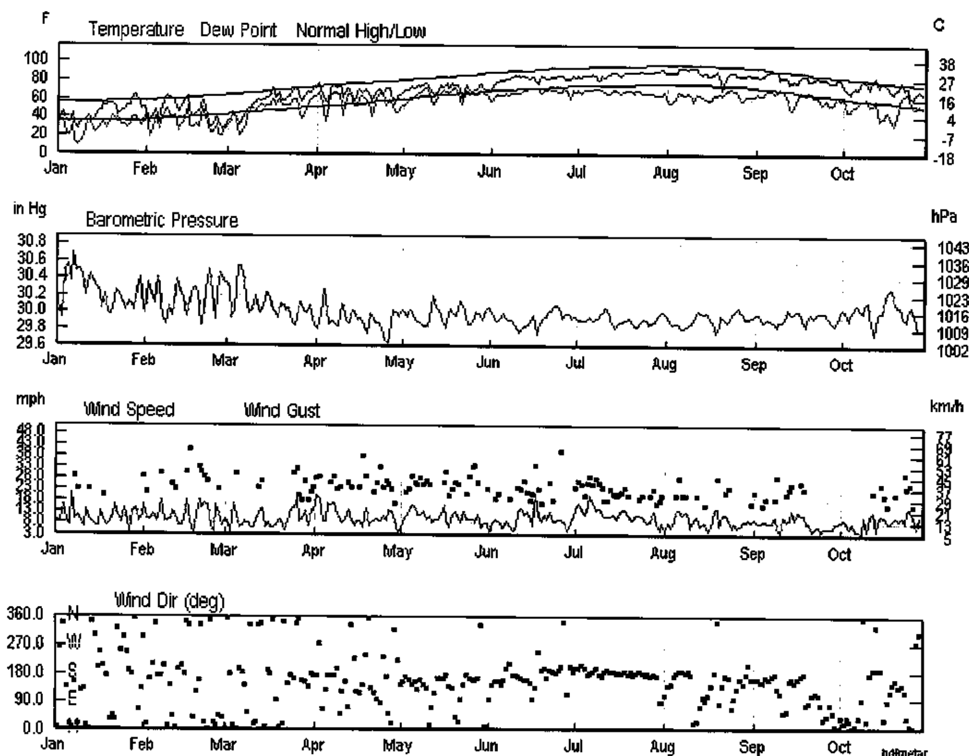
Get History

Daily Weekly Monthly **Custom**

	Max	Avg	Min	Sum
Temperature				
Max Temperature	106 °F	79 °F	30 °F	
Mean Temperature	94 °F	70 °F	27 °F	
Min Temperature	83 °F	60 °F	16 °F	
Degree Days				
Heating Degree Days (base 65)	38	5	0	1530
Cooling Degree Days (base 65)	29	10	0	2976
Growing Degree Days (base 50)	43	21	0	6358

	Max	Avg	Min	Sum
Dew Point				
Dew Point	75 °F	55 °F	1 °F	
Precipitation				
Precipitation	3.55 in	0.17 in	0.00 in	46.67 in
Snowdepth	4.0 in	0.0 in	0.0 in	-
Wind				
Wind	44 mph	10 mph	0 mph	
Gust Wind	55 mph	24 mph	16 mph	
Sea Level Pressure				
Sea Level Pressure	30.89 in	30.01 in	29.51 in	

Custom Weather History Graph



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Airport or City:

KDFW

Submit

Trip Planner

Search our weather history database for the weather conditions in past years. The results will help you decide how hot, cold, wet, or windy it might be!

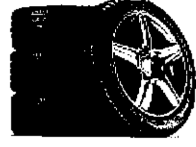
Date:

January

1

Submit

Save up to $250 on the right tires.
Hurry, **sale ends this week.**



RightTurn.com

› Save Now

Weather History & Observations

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Jan	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	36	34	31	35	31	23	96	80	64	30.41	30.28	30.20	10	4	1	10	6	12	0.59	Rain
	40	38	36	40	37	35	100	96	92	30.22	30.11	29.92	10	4	1	15	9	19	0.37	Rain , Thunderstorm
	54	46	38	39	37	33	100	75	50	30.11	29.94	29.85	10	10	6	15	9	18	0.33	Rain , Thunderstorm
	42	35	28	33	22	14	79	62	44	30.68	30.48	30.14	10	10	10	30	16	35	0.00	
	46	34	21	27	19	13	74	54	33	30.71	30.55	30.32	10	10	10	20	9	24	0.00	
	58	44	30	34	31	25	78	59	40	30.43	30.36	30.31	10	10	10	17	7	20	0.00	
	40	31	22	28	13	1	75	51	26	30.89	30.69	30.39	10	10	10	36	21	43	0.00	
	38	27	16	16	9	2	56	44	32	30.82	30.49	30.27	10	10	10	23	10	29	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	39	33	27	21	13	6	63	48	32	30.58	30.51	30.34	10	10	10	22	11	26	0.00	
	38	35	31	31	18	4	89	60	31	30.55	30.43	30.30	10	9	6	15	8	18	0.05	Rain
	42	38	33	41	36	32	100	95	89	30.30	30.19	30.09	9	5	1	13	6	15	0.37	Rain
	44	40	35	41	35	27	100	85	70	30.47	30.33	30.17	10	8	0	23	14	27	T	Rain
	39	35	31	29	28	25	85	75	64	30.51	30.45	30.39	10	9	4	18	10	23	T	Rain
	41	39	36	29	24	17	75	60	44	30.41	30.35	30.27	10	10	10	13	8	14	0.00	
	56	45	34	32	27	17	69	54	38	30.37	30.30	30.27	10	10	10	16	7	18	0.00	
	63	47	31	37	32	28	85	58	30	30.32	30.22	30.09	10	10	10	16	7	20	0.00	
	68	54	39	38	34	29	85	55	24	30.25	30.05	29.95	10	10	10	25	13	30	0.00	
	70	52	33	32	27	24	75	47	18	30.32	30.21	30.07	10	10	10	20	9	24	0.00	
	69	54	38	39	33	28	70	48	26	30.06	29.98	29.92	10	10	10	16	7	18	0.00	
	70	55	39	46	40	31	85	63	40	30.13	29.97	29.90	10	10	9	22	8	27	0.00	
	61	51	40	46	37	32	93	64	35	30.22	30.15	30.10	10	9	5	16	11	21	0.32	Rain
	47	42	36	44	39	34	100	91	82	30.31	30.25	30.14	10	7	3	30	16	36	1.05	Rain
	52	45	38	36	32	26	85	62	38	30.28	30.21	30.16	10	10	10	23	11	28	0.00	
	60	47	33	36	32	28	89	63	37	30.18	30.10	29.98	10	10	10	14	8	16	0.00	
	64	53	41	36	29	23	79	51	22	30.19	30.03	29.92	10	10	10	33	15	39	0.00	
	72	53	34	37	32	26	70	49	28	30.22	30.13	30.06	10	10	10	14	8	17	0.00	
	78	60	41	41	38	35	76	49	22	30.18	30.11	30.07	10	10	10	10	4	13	0.00	
	80	64	47	43	41	39	71	48	25	30.11	30.03	29.94	10	10	10	24	13	30	0.00	
	69	59	49	40	36	30	59	46	32	30.48	30.25	30.02	10	10	10	24	15	31	0.00	
	57	49	40	32	30	28	70	53	35	30.50	30.40	30.29	10	10	10	16	9	21	0.00	
	54	51	47	52	41	29	100	71	42	30.27	30.05	29.86	10	6	1	18	11	22	0.54	Rain
2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Feb	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	58	46	34	56	43	19	100	73	45	30.31	29.99	29.82	10	9	6	31	16	36	0.10	Rain

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	42	33	24	24	18	14	68	52	36	30.45	30.35	30.28	10	10	10	25	10	31	0.00	
	54	43	31	34	27	24	75	55	35	30.31	30.22	30.15	10	10	10	18	10	22	0.00	
	57	47	37	46	41	35	93	80	66	30.30	30.11	30.00	10	7	2	26	12	32	T	Rain
	37	33	29	34	27	24	92	81	69	30.49	30.40	30.31	10	7	4	23	9	27	T	
	58	45	32	40	33	26	82	65	47	30.40	30.29	30.12	10	9	6	17	10	23	0.00	
	69	56	42	48	44	40	89	67	44	30.11	29.94	29.83	10	9	5	29	18	35	0.00	
	73	62	51	54	49	47	96	70	44	29.99	29.86	29.76	10	9	5	23	9	28	0.00	
	75	61	46	49	41	38	80	54	27	30.14	30.06	29.99	10	10	10	16	9	20	0.00	
	75	60	45	44	41	38	76	54	31	30.05	29.95	29.85	10	10	10	22	10	26	0.00	
	67	56	45	47	42	30	86	64	42	30.32	30.08	29.88	10	10	9	25	13	32	0.00	
	55	46	36	30	25	19	64	46	28	30.49	30.39	30.32	10	10	10	23	11	30	0.00	
	67	51	35	38	31	24	70	50	29	30.36	30.26	30.15	10	10	10	18	7	23	0.00	
	78	59	40	41	37	33	76	49	21	30.25	30.16	30.07	10	10	10	14	7	17	0.00	
	73	62	50	58	52	42	84	67	49	30.06	29.96	29.85	10	10	7	28	13	33	T	Rain
	62	46	29	50	30	24	93	81	69	30.20	30.05	29.87	10	8	2	29	18	37	0.22	Rain
	54	41	28	40	29	22	83	62	41	30.28	30.21	30.13	10	10	10	32	8	41	0.05	Rain , Thunderstorm
	57	44	30	35	31	22	89	60	27	30.37	30.30	30.24	10	10	10	10	3	12	0.00	
	60	46	32	39	29	19	66	53	40	30.39	30.24	30.04	10	10	10	22	12	25	0.00	
	70	58	46	59	51	38	93	75	57	30.04	29.83	29.65	10	9	2	36	18	42	T	
	67	57	46	59	46	38	84	71	57	30.04	29.86	29.64	10	10	7	30	15	39	0.00	
	50	40	29	41	34	26	96	83	70	30.50	30.25	30.02	10	6	1	29	17	35	1.30	Rain , Snow
	30	28	26	25	23	21	85	83	81	30.58	30.51	30.41	10	5	1	30	16	36	0.17	Rain , Snow
	37	31	25	27	23	21	88	76	64	30.41	30.23	30.02	10	10	6	14	6	17	T	
	52	42	32	36	32	28	92	72	52	29.99	29.91	29.80	10	5	0	12	4	14	0.66	Rain , Snow
	38	34	30	34	22	11	92	68	43	30.43	30.23	29.92	10	9	5	28	16	34	T	Snow
	30	27	24	23	19	10	88	66	43	30.53	30.46	30.42	10	4	0	20	12	25	0.26	Rain , Snow

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	32	29	26	30	26	23	100	92	84	30.43	30.37	30.30	10	5	1	12	7	13	0.20	Rain

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Mar	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	37	35	32	34	32	30	96	91	85	30.40	30.34	30.29	10	5	1	17	10	21	0.07	Rain , Snow
	40	37	33	40	36	32	100	93	85	30.40	30.29	30.15	10	2	0	18	7	23	0.03	Fog , Rain
	52	46	40	52	46	39	100	97	93	30.11	29.93	29.82	6	3	0	12	4	16	0.05	Fog , Rain
	52	39	26	51	37	25	100	96	92	30.34	30.03	29.82	10	4	0	33	17	41	0.70	Fog , Rain , Snow , Thunderstorm
	39	31	22	25	20	14	92	68	44	30.64	30.53	30.36	10	9	0	25	11	33	0.06	Snow
	51	37	22	29	23	19	88	60	32	30.61	30.53	30.45	10	10	9	12	6	16	0.00	
	61	45	28	35	30	25	82	57	32	30.46	30.37	30.27	10	10	10	16	7	19	0.00	
	50	48	46	47	43	32	100	75	50	30.24	30.15	30.07	10	7	0	16	9	19	0.08	Rain
	50	49	47	48	47	46	100	97	93	30.07	29.99	29.88	10	4	0	14	8	16	0.65	Rain
	59	54	49	50	49	48	100	86	72	30.14	30.02	29.93	10	6	0	14	6	16	T	Rain
	68	56	44	52	47	44	100	76	52	30.29	30.20	30.14	10	7	0	15	6	18	0.00	Fog
	69	59	49	55	50	45	89	71	53	30.21	30.11	30.01	10	10	10	17	9	22	T	Rain
	60	57	54	55	54	53	93	86	78	30.05	29.99	29.95	10	8	2	20	12	24	0.34	Rain
	64	60	55	53	50	48	93	77	60	30.19	30.07	29.99	10	10	10	28	15	34	0.00	
	68	61	54	54	52	48	86	75	63	30.31	30.24	30.19	10	10	10	16	6	21	T	
	77	64	50	56	52	48	100	71	41	30.25	30.17	30.06	10	10	6	15	8	19	0.00	
	81	71	60	63	59	54	90	68	45	30.14	30.06	30.01	10	10	9	15	6	19	0.00	
	66	61	55	56	53	49	87	77	67	30.06	30.00	29.93	10	10	7	14	6	16	0.03	Rain
	77	67	56	64	60	54	100	80	60	29.99	29.94	29.87	10	6	0	16	7	19	T	Rain
	61	57	53	58	53	51	100	93	86	30.18	30.11	29.99	10	8	1	24	10	28	0.40	Rain
	63	58	53	56	53	50	93	86	78	30.16	30.09	30.03	10	9	4	13	7	15	0.06	Rain
	69	61	52	54	52	51	100	78	55	30.06	30.02	29.98	10	9	2	10	5	12	0.06	Rain
	75	63	51	55	53	49	93	70	46	30.14	30.05	29.96	10	10	10	15	9	20	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	82	71	59	64	59	52	90	71	51	29.95	29.88	29.80	10	10	10	25	14	31	0.00	
	81	72	63	61	60	57	93	69	45	29.91	29.83	29.73	10	10	10	26	15	33	T	
	72	61	49	61	42	29	77	52	27	30.15	30.03	29.81	10	10	6	33	19	41	T	Rain , Thunderstorm
	70	57	43	42	38	33	71	52	32	30.19	30.13	30.06	10	10	10	18	9	24	0.00	
	81	63	45	50	44	38	76	56	35	30.15	30.03	29.93	10	10	10	17	10	20	0.00	
	83	68	53	59	52	45	77	60	42	30.06	29.98	29.90	10	10	10	28	13	34	0.00	
	75	67	58	63	60	55	87	76	64	30.16	30.08	29.99	10	10	10	14	7	18	0.00	
	83	73	63	65	62	59	93	72	51	29.99	29.92	29.84	10	10	10	24	14	30	0.00	Rain

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Apr	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	79	72	65	67	63	61	93	77	60	29.90	29.84	29.77	10	9	3	25	13	32	0.10	Rain , Thunderstorm
	83	76	68	68	66	64	87	73	58	29.86	29.80	29.74	10	10	9	28	20	38	0.00	
	73	65	57	66	56	41	87	66	44	30.27	29.98	29.79	10	10	2	26	19	32	0.00	
	68	58	47	40	36	32	61	44	27	30.40	30.28	30.14	10	10	10	18	9	24	T	Rain
	61	56	51	57	52	39	100	73	46	30.16	30.01	29.90	10	7	0	17	9	21	0.75	Rain , Thunderstorm
	83	71	58	66	63	58	100	79	58	29.91	29.86	29.81	10	6	0	31	17	40	T	Rain
	80	75	70	67	66	65	90	76	62	29.95	29.89	29.84	10	10	9	25	16	32	0.00	
	76	72	67	68	66	64	93	81	69	29.92	29.85	29.72	10	10	7	28	17	36	T	Rain
	83	74	65	68	64	46	93	71	48	30.02	29.83	29.75	10	10	10	23	12	28	0.09	Rain , Thunderstorm
	70	61	52	49	43	39	72	56	40	30.21	30.11	30.05	10	10	10	23	9	29	0.00	
	75	64	52	60	54	48	89	75	61	30.15	30.06	29.95	10	10	10	15	8	18	0.00	
	78	72	65	68	65	57	93	81	68	29.96	29.89	29.78	10	10	6	20	10	24	0.02	Rain
	70	64	58	70	64	55	100	87	73	30.06	29.87	29.80	10	6	1	35	14	40	1.08	Rain , Thunderstorm
	60	58	55	56	53	51	86	82	78	30.09	30.03	29.98	10	10	8	18	9	26	0.03	Rain
	75	66	56	56	53	50	93	71	49	30.00	29.95	29.87	10	10	10	14	7	18	0.00	
	78	69	59	65	61	55	90	80	69	29.99	29.92	29.79	10	10	7	18	9	23	T	Rain

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	72	66	59	64	62	58	97	88	79	30.02	29.94	29.89	10	9	2	22	9	27	0.53	Rain , Thunderstorm
	81	70	58	63	60	56	100	77	54	29.93	29.83	29.72	10	9	2	44	6	55	0.48	Rain , Thunderstorm
	77	66	54	63	55	46	100	68	36	29.91	29.74	29.69	10	10	10	30	15	36	0.00	Rain
	69	58	46	43	41	37	80	56	32	30.04	29.98	29.93	10	10	10	16	7	20	0.00	
	73	61	48	55	49	43	78	64	49	30.03	29.96	29.86	10	10	10	17	8	23	0.05	Rain , Thunderstorm
	77	68	58	65	61	54	93	81	69	29.96	29.88	29.81	10	10	7	22	9	25	0.00	
	74	70	65	67	66	64	100	90	79	29.95	29.88	29.82	10	8	1	23	10	31	0.50	Rain , Thunderstorm
	68	64	59	67	64	60	100	97	93	29.88	29.79	29.61	10	6	0	31	9	39	1.03	Fog , Rain , Thunderstorm
	87	71	55	60	53	44	100	61	22	29.72	29.66	29.61	10	10	9	23	11	31	0.00	
	84	71	58	68	60	51	90	72	54	29.68	29.63	29.51	10	10	10	28	9	34	0.02	Rain , Thunderstorm
	73	64	54	62	58	52	100	75	49	29.88	29.73	29.61	10	8	0	31	14	39	0.83	Fog , Rain , Thunderstorm
	59	54	49	52	48	43	96	79	61	30.09	30.02	29.89	10	10	5	21	13	26	0.05	Rain
	75	62	49	50	46	43	86	60	33	30.09	30.01	29.94	10	10	10	16	9	21	0.00	
	78	65	51	54	50	46	89	61	33	30.01	29.96	29.92	10	10	10	9	4	12	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
May	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	82	68	54	57	52	50	83	60	37	30.08	30.02	29.97	10	10	10	12	6	13	0.00	
	81	70	59	59	55	51	78	62	45	30.06	30.01	29.93	10	10	10	16	8	22	0.00	
	79	70	60	60	57	55	84	65	45	30.00	29.96	29.92	10	10	10	20	11	28	0.00	
	81	73	65	65	60	52	87	67	46	30.09	30.02	29.96	10	10	10	23	13	27	0.00	
	81	71	61	68	63	55	90	76	62	30.04	29.95	29.86	10	9	3	30	16	38	0.14	Rain , Thunderstorm
	82	75	68	70	67	66	93	78	62	29.96	29.90	29.80	10	9	2	24	15	31	0.43	Rain , Thunderstorm
	82	73	64	72	67	61	90	80	69	29.96	29.89	29.76	10	9	0	31	12	43	1.34	Fog , Rain , Thunderstorm
	83	75	67	74	70	64	100	85	69	29.92	29.86	29.76	10	8	5	29	12	36	T	Rain , Thunderstorm
	82	76	69	73	71	68	100	85	69	29.91	29.83	29.72	10	8	2	26	13	34	0.04	Rain , Thunderstorm
	79	71	63	71	67	63	100	87	74	29.92	29.83	29.75	10	8	1	31	10	39	1.49	Rain , Thunderstorm

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	73	67	60	65	55	48	100	78	55	30.17	30.04	29.85	10	10	10	21	11	26	0.00	
	72	65	58	60	55	47	84	68	52	30.27	30.19	30.13	10	10	5	16	8	20	0.06	Rain , Thunderstorm
	69	66	62	68	63	58	100	92	84	30.18	30.06	29.96	10	8	0	18	10	25	1.11	Fog , Rain , Thunderstorm
	83	74	64	70	67	64	100	84	67	30.09	30.02	29.94	10	9	6	18	10	23	T	
	78	73	68	71	69	65	100	87	74	29.97	29.92	29.85	10	10	8	21	12	26	0.01	Rain
	84	77	69	71	68	66	97	81	65	29.89	29.82	29.70	10	10	10	28	16	35	T	
	79	72	64	70	66	64	100	87	74	30.01	29.89	29.81	10	8	2	31	10	40	1.68	Rain , Thunderstorm
	88	76	64	73	69	65	100	75	50	30.10	30.04	30.00	10	10	6	20	6	25	0.00	Fog
	80	75	70	73	71	69	100	88	76	30.08	29.98	29.85	10	10	8	23	12	30	T	Thunderstorm
	86	74	62	72	66	58	93	76	59	30.09	29.97	29.86	10	10	9	22	13	27	T	Rain
	66	61	55	58	55	53	100	87	73	30.21	30.15	30.06	10	9	3	25	10	32	0.57	Rain , Thunderstorm
	68	63	57	66	59	52	100	89	78	30.16	30.12	30.06	10	9	0	17	8	22	0.55	Fog , Rain
	81	74	67	73	69	66	100	87	74	30.10	30.02	29.90	10	7	2	28	13	38	0.73	Rain , Thunderstorm
	76	70	63	69	65	63	100	85	69	29.91	29.86	29.81	10	7	0	21	10	24	3.30	Fog , Rain , Thunderstorm
	76	68	59	72	66	60	100	91	82	29.93	29.85	29.76	10	8	0	30	10	43	0.43	Fog , Rain , Thunderstorm
	81	70	58	72	65	58	100	86	71	30.04	29.96	29.88	10	7	1	36	10	47	0.43	Rain , Thunderstorm
	85	72	58	71	64	57	93	74	54	30.07	30.00	29.91	10	10	10	37	8	46	T	Rain , Thunderstorm
	88	76	64	72	69	62	100	78	55	30.09	29.98	29.87	10	9	2	32	12	36	1.56	Rain , Thunderstorm
	77	71	65	68	66	64	100	82	64	29.96	29.91	29.82	10	8	1	18	6	22	2.20	Rain , Thunderstorm
	76	70	64	69	65	63	100	85	69	30.10	30.02	29.93	10	9	1	40	8	45	0.89	Rain , Thunderstorm
	78	69	59	63	58	56	97	72	47	30.13	30.07	30.00	10	10	10	16	8	27	0.00	
2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Jun	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	84	72	59	62	58	56	93	67	40	30.09	30.04	29.98	10	10	10	12	3	16	0.00	
	87	76	65	65	63	61	87	67	46	30.02	29.96	29.88	10	10	10	16	8	21	0.00	
	90	79	67	67	65	63	84	64	44	29.92	29.89	29.83	10	10	10	17	10	23	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	91	80	68	68	65	63	90	67	43	29.98	29.94	29.88	10	10	9	17	9	21	0.00	
	91	80	68	68	65	62	90	66	41	30.07	29.98	29.93	10	10	10	13	6	17	0.00	
	92	82	71	70	66	63	90	64	38	30.04	29.96	29.89	10	10	7	13	6	17	0.00	
	93	82	71	67	65	62	84	61	38	29.98	29.91	29.85	10	10	7	18	9	24	0.00	
	95	84	73	68	66	63	79	58	36	29.99	29.91	29.85	10	10	10	16	7	21	0.00	
	95	85	74	70	66	64	74	57	39	29.91	29.86	29.79	10	10	10	21	5	26	0.00	Thunderstorm
	97	85	72	69	66	62	79	56	33	29.84	29.79	29.73	10	10	10	15	7	20	0.00	
	93	84	74	70	66	63	74	56	38	29.85	29.76	29.70	10	10	10	22	13	28	0.00	
	93	85	76	71	69	65	87	63	39	29.89	29.81	29.74	10	10	10	23	15	29	0.00	
	89	84	78	74	70	67	79	65	51	29.91	29.84	29.78	10	10	8	26	12	35	T	Rain , Thunderstorm
	88	82	76	72	71	68	82	69	55	29.92	29.86	29.81	10	10	10	22	13	26	0.00	
	92	84	76	73	71	66	87	68	49	30.00	29.94	29.87	10	10	9	24	10	29	0.02	Rain
	87	80	73	75	72	68	87	79	71	30.02	29.97	29.92	10	9	1	9	7	23	0.13	Rain
	80	77	74	75	72	68	94	88	82	29.88	29.74	29.60	10	4	1	40	21	48	2.21	Rain
	95	85	75	73	67	64	79	58	36	29.94	29.87	29.81	10	10	10	23	11	29	T	
	95	84	73	72	70	68	87	67	46	30.01	29.94	29.88	10	10	10	18	9	21	0.00	
	86	81	76	73	70	66	79	67	55	30.02	29.96	29.92	10	10	10	22	12	27	T	
	90	82	74	75	72	69	94	79	63	30.06	30.00	29.91	10	10	4	28	10	36	0.07	Rain , Thunderstorm
	94	84	73	73	70	67	88	66	44	30.09	30.03	29.98	10	10	7	22	13	28	0.00	
	94	84	74	72	70	68	87	67	46	30.15	30.09	30.04	10	10	10	15	9	21	0.00	
	95	86	77	73	68	62	79	58	36	30.14	30.08	30.02	10	10	10	17	9	20	0.00	
	95	86	76	71	68	65	82	61	39	30.07	30.01	29.94	10	10	10	15	10	21	0.00	
	95	84	72	74	71	68	87	65	43	29.97	29.93	29.86	10	9	0	40	10	47	1.29	Fog , Rain , Thunderstorm
	90	82	74	74	69	59	88	65	41	30.02	29.98	29.92	10	10	2	17	9	23	0.20	Rain , Thunderstorm
	92	82	72	66	61	54	73	51	29	30.04	29.98	29.91	10	10	10	10	5	13	0.00	
	96	86	75	72	69	64	82	59	36	29.98	29.93	29.86	10	10	10	16	8	20	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	95	83	71	72	68	63	79	61	43	30.02	29.96	29.89	10	10	6	26	11	34	0.03	Rain , Thunderstorm

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Jul	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	94	85	75	70	69	67	82	62	41	29.99	29.94	29.89	10	10	9	26	15	31	0.00	
	93	84	74	70	67	64	87	64	41	29.97	29.91	29.84	10	10	8	26	17	32	0.00	
	92	86	79	72	69	66	79	62	44	29.96	29.91	29.86	10	10	10	23	14	29	0.00	
	94	86	78	71	70	67	74	58	41	29.95	29.91	29.86	10	10	10	20	12	23	0.00	
	93	85	77	73	70	67	88	66	44	30.01	29.95	29.88	10	10	10	24	16	30	0.00	
	93	87	80	73	70	65	79	62	44	29.99	29.93	29.83	10	10	10	29	20	36	0.00	
	92	86	80	73	71	69	79	64	49	29.98	29.92	29.87	10	10	10	25	17	31	0.00	
	85	80	74	74	72	69	79	72	65	30.00	29.94	29.89	10	8	1	25	14	32	0.92	Rain , Thunderstorm
	92	85	77	73	69	64	85	63	41	30.05	29.99	29.94	10	10	7	26	15	32	0.00	
	92	83	73	71	68	65	87	66	44	30.09	30.03	29.97	10	10	9	23	12	28	0.00	
	94	85	76	69	67	64	82	61	39	30.12	30.06	30.02	10	10	8	17	11	27	0.00	
	96	87	77	70	67	63	76	55	33	30.06	30.00	29.92	10	10	10	16	11	21	0.00	
	98	88	77	73	70	67	76	58	40	29.94	29.87	29.78	10	10	8	18	11	27	0.00	
	98	89	79	72	69	66	79	59	38	29.86	29.81	29.76	10	10	10	17	12	22	0.00	
	96	86	76	70	67	62	76	55	34	29.93	29.87	29.82	10	10	10	16	10	21	0.00	
	96	86	75	69	66	61	82	56	30	29.93	29.89	29.84	10	10	10	18	12	24	0.00	
	97	88	79	70	68	63	74	54	33	29.94	29.89	29.83	10	10	10	21	14	26	0.00	
	99	89	79	73	70	66	85	60	35	29.96	29.91	29.87	10	10	10	21	14	25	0.00	
	99	89	78	73	69	65	74	54	33	29.99	29.93	29.87	10	10	10	17	12	22	0.00	
	99	89	78	71	67	61	79	54	29	29.94	29.88	29.79	10	10	10	17	10	23	0.00	
	97	88	79	72	69	64	69	52	35	29.88	29.83	29.76	10	10	10	16	10	21	0.00	
	98	89	80	72	69	65	69	52	35	29.88	29.83	29.78	10	10	10	18	12	23	0.00	
	99	90	80	72	67	63	74	53	31	29.95	29.89	29.85	10	10	10	20	12	23	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	99	89	79	69	66	62	71	51	31	30.00	29.94	29.89	10	10	10	20	11	24	0.00	
	99	89	79	71	66	58	69	48	27	29.96	29.91	29.84	10	10	10	15	9	18	0.00	
	100	89	77	70	67	63	71	52	33	29.90	29.86	29.81	10	10	10	16	8	21	0.00	
	100	89	78	72	67	64	74	54	33	29.92	29.87	29.81	10	10	10	18	9	26	0.00	
	99	90	80	70	65	61	69	49	29	29.94	29.90	29.86	10	10	10	20	13	26	0.00	
	102	91	79	71	65	60	71	49	27	30.02	29.97	29.93	10	10	10	14	8	18	0.00	
	104	92	80	69	65	61	62	44	25	30.07	30.01	29.95	10	10	7	18	5	24	0.00	
	98	90	81	72	68	55	74	53	32	30.06	30.01	29.95	10	10	10	17	8	23	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Aug	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	97	88	78	63	58	51	54	38	22	30.05	29.97	29.89	10	10	10	13	5	16	0.00	
	99	88	77	60	56	53	56	40	24	29.96	29.89	29.82	10	10	10	15	8	18	0.00	
	101	89	77	63	59	55	54	39	24	29.91	29.86	29.82	10	10	10	15	6	19	0.00	
	99	89	79	69	64	61	58	44	29	29.94	29.88	29.83	10	10	10	17	9	22	0.00	
	103	93	82	72	68	65	69	50	31	29.93	29.87	29.81	10	10	10	21	13	25	0.00	
	103	93	83	70	66	63	65	48	31	29.88	29.82	29.75	10	10	10	25	14	30	0.00	
	103	93	82	69	65	60	65	45	25	29.88	29.82	29.77	10	10	10	18	12	23	0.00	
	103	92	81	71	66	61	74	50	25	29.89	29.83	29.78	10	10	10	18	13	24	0.00	
	106	93	80	70	62	48	69	42	15	29.92	29.87	29.82	10	10	10	20	11	23	0.00	
	106	93	79	67	58	50	67	42	17	29.94	29.88	29.83	10	10	10	14	6	18	0.00	
	104	94	83	72	67	59	65	49	33	30.03	29.96	29.89	10	10	10	18	10	22	0.00	
	99	89	79	70	65	61	62	46	29	30.08	30.02	29.96	10	10	9	21	11	26	0.00	
	98	87	76	66	63	59	64	47	29	30.06	30.00	29.92	10	10	10	15	7	17	0.00	
	97	88	78	67	61	56	54	41	28	30.05	29.99	29.91	10	10	10	17	8	23	0.00	
	96	86	76	60	59	56	60	44	28	30.06	30.00	29.92	10	10	10	14	8	18	0.00	
	98	86	74	64	60	55	60	43	25	30.00	29.94	29.85	10	10	10	13	5	16	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	98	87	76	68	64	61	74	53	31	29.96	29.90	29.81	10	10	10	16	7	19	0.00	
	99	90	80	69	65	61	69	49	29	29.87	29.77	29.67	10	10	10	23	14	31	0.00	
	91	80	68	72	67	59	81	65	48	29.99	29.83	29.68	10	10	10	28	15	32	0.06	Rain , Thunderstorm
	75	70	65	68	64	59	90	79	68	30.04	29.97	29.91	10	9	2	16	7	19	0.40	Rain
	93	82	71	72	68	65	93	69	44	30.02	29.94	29.85	10	9	4	22	12	30	0.00	
	97	87	76	73	70	66	87	64	40	29.95	29.89	29.80	10	10	10	20	12	26	0.00	
	98	89	79	73	72	69	85	64	42	30.02	29.94	29.86	10	10	10	23	10	29	0.00	
	100	89	78	74	70	65	85	62	38	30.06	30.00	29.94	10	10	10	13	6	17	0.00	Thunderstorm
	93	86	78	73	70	66	85	65	44	30.09	30.03	29.98	10	10	10	15	8	20	0.00	
	95	85	74	72	61	49	84	54	24	30.13	30.07	30.01	10	10	10	14	6	16	0.00	
	97	85	72	65	60	55	64	48	31	30.06	30.00	29.94	10	10	10	17	7	22	0.00	
	97	85	72	64	62	60	73	52	30	29.99	29.94	29.88	10	10	10	17	9	20	0.00	
	96	87	78	65	63	61	62	48	33	29.99	29.94	29.88	10	10	10	20	9	23	T	
	97	86	75	66	62	55	74	50	26	29.99	29.93	29.88	10	10	10	18	10	24	0.00	
	95	85	74	67	63	60	74	54	33	30.01	29.95	29.91	10	10	10	18	9	23	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Sep	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	95	85	75	69	66	59	82	57	32	30.02	29.98	29.93	10	10	10	18	10	28	0.00	
	95	84	73	69	65	61	84	59	33	30.05	29.98	29.90	10	10	10	16	8	22	0.00	
	95	85	75	69	65	60	76	55	33	29.96	29.90	29.82	10	10	10	14	8	19	0.00	
	96	87	78	72	68	66	79	59	39	29.94	29.89	29.86	10	10	10	15	9	19	0.00	
	97	88	78	73	70	66	79	59	38	30.00	29.93	29.89	10	10	10	21	9	24	0.00	
	100	90	79	74	70	65	85	59	33	29.99	29.92	29.86	10	10	10	15	8	20	0.00	
	101	90	79	71	67	63	71	51	31	29.96	29.89	29.81	10	10	10	16	8	21	0.00	
	99	90	80	72	68	64	74	54	33	29.90	29.84	29.75	10	10	10	17	11	22	0.00	
	88	81	73	74	72	65	93	70	46	29.96	29.89	29.80	10	7	0	26	6	31	2.00	Rain , Thunderstorm

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	94	84	74	73	69	64	87	63	39	29.96	29.90	29.81	10	10	10	14	4	16	0.00	
	94	84	73	71	64	56	87	58	28	30.04	29.94	29.88	10	10	10	23	11	29	0.00	
	86	76	66	59	50	44	66	45	23	30.12	30.05	29.98	10	10	10	18	9	26	0.00	
	91	78	64	52	49	45	60	40	20	30.05	29.99	29.89	10	10	10	21	10	27	0.00	
	90	80	69	57	53	46	66	48	29	30.05	29.98	29.94	10	10	10	21	14	28	0.00	
	89	79	69	70	63	48	73	59	44	30.10	30.03	29.97	10	10	10	23	10	29	0.00	
	92	84	75	71	68	65	87	64	41	30.10	30.02	29.95	10	10	10	23	13	29	0.00	
	94	85	75	72	67	63	87	63	39	30.02	29.93	29.84	10	10	10	21	12	26	0.00	
	95	86	76	71	65	60	82	58	33	29.89	29.84	29.78	10	10	10	18	12	25	0.00	
	86	80	74	72	68	61	93	72	51	30.01	29.93	29.85	10	10	6	17	8	21	0.14	Rain
	88	80	72	70	65	60	84	62	40	30.01	29.98	29.93	10	10	10	18	8	23	0.00	
	95	82	69	66	62	60	78	56	33	30.02	29.96	29.90	10	10	10	10	5	16	0.00	
	94	83	72	65	63	60	73	55	36	30.05	29.99	29.95	10	10	10	12	6	18	0.00	
	93	82	71	61	54	44	61	41	20	30.06	30.00	29.95	10	10	10	14	7	20	0.00	
	93	82	70	60	56	53	60	44	28	30.07	30.01	29.98	10	10	10	10	4	14	0.00	
	93	82	71	63	59	54	73	52	30	30.07	30.01	29.95	10	10	10	15	6	18	0.00	
	91	79	67	59	54	49	70	47	24	30.01	29.96	29.89	10	10	10	15	6	20	0.00	
	91	79	67	59	54	51	63	45	27	29.96	29.90	29.84	10	10	10	12	6	19	0.00	
	90	79	68	63	60	57	78	56	34	29.91	29.85	29.78	10	10	9	15	6	19	0.00	
	92	82	71	66	62	57	74	55	36	29.94	29.88	29.84	10	10	10	17	8	22	0.00	
	92	81	70	63	60	57	73	53	32	30.03	29.97	29.93	10	10	10	15	8	21	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
Oct	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	high	sum	
	81	73	65	62	61	57	87	68	49	30.14	30.05	30.01	10	10	9	18	9	21	T	
	81	69	57	58	47	39	73	49	25	30.11	30.03	29.93	10	10	10	14	10	22	0.00	
	80	67	54	49	47	44	67	49	30	29.98	29.91	29.86	10	10	10	16	7	22	0.00	

2015	Temp. (°F)			Dew Point (°F)			Humidity (%)			Sea Level Press. (in)			Visibility (mi)			Wind (mph)			Precip. (in)	Events
	81	69	57	53	50	48	77	55	33	30.06	29.98	29.92	10	10	10	14	6	17	0.00	
	82	73	63	55	53	50	67	52	36	30.12	30.05	30.00	10	10	10	17	8	22	0.00	
	84	71	58	59	56	55	87	64	40	30.17	30.10	30.02	10	10	7	13	5	15	0.00	
	89	78	66	61	59	56	81	58	34	30.11	30.04	29.98	10	10	10	12	5	15	0.00	
	91	80	68	62	59	57	76	54	32	30.06	30.01	29.95	10	10	8	12	4	15	0.00	
	90	78	66	65	61	55	79	60	40	30.19	30.10	30.01	10	10	8	28	11	32	0.00	
	84	72	59	58	52	45	84	55	26	30.23	30.14	30.03	10	10	10	12	5	15	0.00	
	95	80	64	58	54	49	67	48	28	30.02	29.87	29.71	10	10	10	24	12	29	0.00	
	94	84	73	64	59	44	64	48	32	29.90	29.75	29.67	10	10	10	23	13	27	0.00	
	90	73	56	46	37	27	62	36	10	30.05	29.98	29.91	10	10	2	16	5	18	0.00	
	96	77	57	45	38	30	55	33	10	30.06	30.00	29.96	10	10	10	15	9	21	0.00	
	95	79	63	46	41	35	48	30	12	30.07	30.01	29.96	10	10	10	23	12	27	0.00	
	85	74	63	50	47	42	56	43	29	30.27	30.19	30.07	10	10	10	22	11	25	0.00	
	79	69	58	44	38	32	55	38	21	30.36	30.28	30.24	10	10	10	16	8	20	0.00	
	79	67	54	37	32	26	47	31	15	30.40	30.30	30.23	10	10	10	16	8	20	0.00	
	83	69	54	37	35	33	47	32	17	30.27	30.18	30.08	10	10	10	21	10	23	0.00	
	84	71	57	62	51	35	72	51	30	30.15	30.08	30.01	10	10	10	22	11	27	0.00	
	86	78	69	66	63	56	84	66	48	30.18	30.09	30.04	10	10	7	20	10	25	T	
	78	72	66	69	64	56	97	74	50	30.07	29.96	29.87	10	7	1	23	11	29	2.58	Rain , Thunderstorm
	76	73	69	71	68	67	100	91	82	29.99	29.91	29.86	10	6	0	30	8	37	3.55	Fog , Rain , Thunderstorm
	69	65	60	67	60	50	90	80	69	30.10	30.00	29.88	10	8	3	25	14	30	1.41	Rain , Thunderstorm
	65	61	57	55	53	48	93	75	56	30.14	30.09	30.05	10	10	4	24	15	30	0.03	Rain
	77	66	55	54	50	46	72	58	43	30.07	29.99	29.90	10	10	10	17	11	22	0.00	
	79	69	58	57	54	48	87	63	38	29.91	29.80	29.70	10	10	10	12	6	16	0.00	
	77	66	55	53	50	46	86	61	36	29.87	29.79	29.64	10	10	9	30	11	37	0.00	

report this ad

Exhibit

"C"

DATE 11/04/2014 **DAILY LOG** DAY OF WEEK Tuesday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today

Moisture Conditioning

lab test Density

Rain Shut down @ 12:00 noon

Weather	Rain
Temp. AM	61 PM 57
Safety Meeting	

Work Force	No.
Assistant Superintendent	1 1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	2
Total	4

Problems - Delays Rain Shut down Excavators At 12:00 noon

Subcontractor Progress Moisture Conditioning Cut at Front building

Equipment Track Hoes	Hrs.
Doosan 255 / John Deere 200	5
Cat 938 G Loader	5

Special Assignments

Material Purchased

Extra Work	Authorized by	Price

Equip. rented today	Rented from	Rate

DATE 11/05/2014

DAILY LOG

DAY OF WEEK Wednesday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today

Rain Day

SWPPP inspection (Daron King)

Weather: Rain

Temp. AM 49 PM 58

Safety Meeting —

Work Force	No.
Assistant Superintendent	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Total	2

Problems - Delays: Rain

Subcontractor Progress: Rain Day

Equipment	Hrs.
Doosan 255	0
John Deere 200	0
Cat 938G Loader	0

Special Assignments

Extra Work	Authorized by	Price

Material Purchased

Equip. rented today	Rented from	Rate

DATE 11/13/2014

DAILY LOG

DAY OF WEEK Thursday

CONTRACTOR SDC

JOB NAME VVP

JOB #

Work Performed Today

Dig out Parking Garage

Robert called his contact at Oncor Again
I Called Oncor Again
Very Cold

Weather Cold Pt Cloudy

Temp. AM 30 PM 37

Safety Meeting

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	1
Total	3

Problems - Delays Oncor came out in an Emergency vehicle after I called Again. After agreeing that we do not have power. the Tech called in to office. He said they would be back today to install a transformer. At 4:00 no Power still.

Subcontractor Progress

Equipment	Hrs.
Doosan 255	8
Deer 655C Loader	

Special Assignments

Material Purchased

Extra Work	Authorized by	Price

Equip. rented today	Rented from	Rate

DATE 11/14/2014 DAY OF WEEK Friday

DAILY LOG

CONTRACTOR SDC JOB NAME UP JOB #

Weather Cloudy Cold

Temp AM 28 PM 39

Safety Meeting

Work Performed Today

Nick w/ Thunderhorse came and moved out T Pole to west side of driveway

Oncor Installed a new Transformer on pole west of driveway.

Dug a trench to bury line from T Pole to Trailer

Standard Utility Construction came out at 245 and tied T Pole to Transformer and set a meter.

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	3
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
EXCAVATORS	1
Total	6

Problems - Delays No Power

Subcontractor Progress Added a lift to scale off Gus Thomasson.

Equipment	Hrs.
Doosan 255	8

Special Assignments

Extra Work	Authorized by	Price

Equip. rented today	Rented from	Rate

Material Purchased

DATE 11/17/2014 **DAILY LOG** DAY OF WEEK Monday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today

Sam, Alice, Adolpho and John Pablo w/ TACO Bell met at Trailer to discuss starting construction of new dumpster site & drive thru.

Blading Grade Section

Weather: Cold Clear

Temp. AM 25 PM 45

Safety Meeting —

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	2
SWPPP	1
Total	5

Problems - Delays Waiting on Permits to Start Utilities. Waiting on gas line to be moved.

Subcontractor Progress

Equipment	Hrs.
Doosan 255	8
Cat 140 Grader	8

Special Assignments

Extra Work	Authorized by	Price

Equip. rented today	Rented from	Rate

Material Purchased

DATE 12/19/2014

DAILY LOG

DAY OF WEEK Friday

CONTRACTOR SDC

JOB NAME VVP

JOB #

Work Performed Today

Sam Engineering Tested Garage
(Pass)

Weather Rain / Cloudy / Rain

Temp. AM 46 PM 46

Safety Meeting —

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	2
Sam Engineering	1
Total	5

Problems - Delays Waiting on Utilities Permit.
Deer 635C Broke Down

Subcontractor Progress

Equipment	Hrs.
Cat D5	∅
Cat 320D	6
Deer 635C	6

Special Assignments

Extra Work	Authorized by	Price

Material Purchased

Equip. rented today	Rented from	Rate

DATE 12/23/2014

DAILY LOG

CONTRACTOR SDC

DAY OF WEEK Tuesday

JOB NAME UVP

JOB #

Work Performed Today

Surveyors put hubs at corners of garage

Jose with Valcon was here to check on progress.

Recived 1/2 inch rain Today

Problems - Delays Waiting on Utilities Permits

Subcontractor Progress

Special Assignments

Weather	Rain / Cloudy
Temp. AM 45	PM 52
Safety Meeting	—

Work Force	No.
Assistant Superintendent	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	
Surveyors	4
Valcon	1
Total	7 [illegible]

Equipment	Hrs.
Cat 320 D	0
[illegible] 655	0
[illegible]	0
Cat 953C	0

Extra Work	Authorized by	Price

Equip. rented today	Rented from	Rate

Material Purchased

DAILY LOG

DATE 12/26/2014 | DAY OF WEEK Friday

CONTRACTOR SDC | JOB NAME VVT | JOB #

Work Performed Today: Light mist falling ???

Sam Engineering Tested Section D + Section C along Forest Dr.

Jesus w/ J+G came in to stucky plans.

Work on garage floor to ready for Vulcon

Weather: Cloudy / Cloudy

Temp. AM 55 PM 63

Safety Meeting ——

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	[illegible]
Excavators	4
Sam Engineering	1
Total	7

Problems - Delays: Waiting on utilities Permit

Subcontractor Progress

Equipment	Hrs.
Cat 320 D	8
Deer 655 Loader	8
~~[illegible]~~	
Cat 953C Loader	8

Special Assignments

Extra Work	Authorized by	Price

Material Purchased

Equip. rented today	Rented from	Rate

DATE 1/2/2015

DAILY LOG

DAY OF WEEK Friday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today: Rain last night 3/4"

Sam Came by to check on progress

Jose w/ Vulcon stopped in to see conditions

Weather: Cloudy / Rain

Temp. AM 39 PM 41

Safety Meeting —

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	0
Vulcon	0
Rumsey	0
Sam	1
Total	3

Equipment	Hrs.
310J Bkh..	0
Cat 320D	0
Cat 953	0

roblems - Delays: Waiting on Utilities Permit

Rain

ubcontractor Progress

pecial Assignments

xtra Work | Authorized by | Price

Material Purchased

uip. rented today | Rented from | Rate

DAILY LOG

DATE 1/10/2015 — DAY OF WEEK Saturday

CONTRACTOR SDC — JOB NAME VVP — JOB #

Work Performed Today: Light Rain Started @ 12:30 pm

Thompson Excavating hauling off concrete and hauling in Road Base

Brad Thompson came in to discuss progress and a plan to complete Bldg 1 Section A and Street + Fire lines.

Weather: Cloudy / Cloudy

Temp. AM 32 PM 39

Safety Meeting —

Work Force	No.
Assistant Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	3
Excavators	2
Valcon	4
Total	10

Problems - Delays: Waiting on Utilities Permit.

Subcontractor Progress

Special Assignments

Equipment	Hrs
310 J Backhoe	
CAT 953 C Loader	
JD 544 J	
240 D Trackhoe	
Tandem Dump 3	

Material Purchased

Extra Work	Authorized by	Price

Equip. rented today	Rented from	Rate

DATE 1/12/2015

DAILY LOG

DAY OF WEEK Monday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today 1" Rain over weekend

Rumsey working on 12" Water line install.

Valcon working on spread footing Garage

Excavators working on Bldg 1 Section A

Robert went with Jim to City of Mesquite to check on permit.

Rumsey hauling in road Base.

Thompson Excavating hit gas line servicing JRS Catfish 12:45 pm Called Atmos and Fire Dept.

Atmos Repairing Broken line Will be repaired today

Problems - Delays Waiting on Utilities Permit.
Muddy

Thompson Excavating hit gas line servicing JRs Catfish @ 12:45 approx Called Atmos and Fire Dept.

Subcontractor Progress

Special Assignments Robert and Jim staying until completion.

Extra Work

Extra Work	Authorized by	Price

Equip. rented today

Equip. rented today	Rate

Weather Cloudy / Cloud

Temp. AM 42 PM 41

Safety Meeting —

Work Force	No.
Assistant	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Excavators	3
Valcon	4
Rumsey	5
Total	14

Equipment	Hrs.
310 J Backhoe	8
Cat 963 x2	8
JD 544 J	8
~~[illegible]~~	
Hitachi 240 LC	8

Material Purchased

DATE 1/22/2015

DAILY LOG

DAY OF WEEK Thursday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today As of 7:00 AM 1" Rain Recorded
No Work today
Robert went to Home office for meeting
Jesus w/ J+G welding came by to figure railing + awning for Mock up
Portables Group delivered two porta potties
United Site Services pickup their potty
United Rental pickup 310 J Backhoe

Weather	Rain / Rain
Temp. AM 40	PM 41
Safety Meeting	—

Work Force	No.
Assistant Superintendent	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
J+G welding	1
Total	3

Equipment	Hrs.
[illegible]	0
[illegible]	0
[illegible]	0

Problems - Delays Muddy No Work
Waiting on Building Permit.

Subcontractor Progress

Special Assignments

Extra Work | Authorized by | Date | Material Purchased

Equip. rented today | Rented from | Rate

DAILY LOG

DATE 1/23/2015

DAY OF WEEK Friday

CONTRACTOR SDC JOB NAME VVP JOB #

Work Performed Today: Total 1 1/2" Rain Recorded
Rumsey Crew showed up and realized conditions too muddy. Left about 8:30 am
Overall Concrete Crew showed up at 8:20 am to start Forms on Bldg 2 Section D.
Adams Surveying Check Bldg 2 Section D
Sheppard Surveying Laying out for Sanitary Sewer for Rumsey & Gus Thompson

Weather: Cloudy / Pt. Cloudy

Temp. AM 41 PM 51

Safety Meeting

Work Force	No.
Assistant Superintendent	1
Superintendent	1
Clerk	
Bricklayers	
Carpenters	
Cement Masons	
Electricians	
Iron Workers	
Laborers	
Operating Eng.	
Plumbers	
Pipe Fitters	
Sheet Metal	
Truck Drivers	
Rumsey	3
Overall	4
Adams	2
Sheppard	1
Total	12

Problems - Delays: Waiting on Bldg Permit
Muddy minimal production Today

Subcontractor Progress: Overall Concrete set Forms on Bldg 2 Section D

Equipment	Hrs.
Cat 963C	Ø
JD 544 Loader	Ø
Hitachi 240LC	Ø

Special Assignments

Extra Work	Authorized by	Price

Material Purchased

Equip. rented today	Rented from	Rate

DAILY FIELD REPORT SDC Construction

DATE: 1/24/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson rd

TEMP. / WEATHER: 41 A.M. **Clear** Cloudy Rain **Mud** Windy Snow Freeze

57 Sunny P.M. **Clear** Cloudy Rain **Mud** Windy Snow Freeze

Project Number

SITE CONDITIONS: Muddy Conditions Sun is out

INSPECTIONS CALLED:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
Overall Concrete	Forming slab Building 2 Section D		3	1
Valcon	Backfill Spred Footings/ Remove forms clean area		3	1
B&J Mechanical	Bill came to get a copy of MEP		1	1
ASSISTANT SUPERINTENDANT				1
	Totals		11	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Waiting on Building Permit.

( ) Please note any Phone orders, Scheduled events or Important information on back of page.

Jim Wester
Project Superintendent

N:/Forms/Superintendent/Daily Field Report

DAILY FIELD REPORT

SDC
Construction

DATE: 2/2/2015

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 26 A.M. **Clear** Cloudy Rain Mud Windy Snow **Freeze**

43 Sunny P.M. **Clear** Cloudy Rain Mud Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	Impact Plaster delivered materials for mock up
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEYMEN	FOREMAN
Rumsey	Working on Sewer line under Broadway by JR'S Catfish.		7	2
B&J Mechanical	Installing underground plumbing Building 2 Section D		2	1
Thompson Excavating	working on garage bringing road base to grade		1	1
Impact Plaster	Delivered materials for mock up		1	1
Sam Sterling	Came to check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		19	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Sent 24hr deficiency notice to

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D	6	Bobcat T550							
John deer 310K	6								
Hitachi 240 LC									
JD 644	6								
JD 544									

DAILY FIELD REPORT

SDC
Construction

DATE: 2/5/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:									
31	A.M.	Clear	**Cloudy**	**Rain**	**Mud**	Windy	Snow	**Freeze**
34	P.M.	Clear	**Cloudy**	Rain	Mud	Windy	Snow	Freeze

SITE CONDITIONS: Muddy

INSPECTION Called	Underground plumbing for garage 4524 (B&J Mechanical)and 4540 Build 2 Sec D
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	Kelly with BLUELINE RENTAL / Ken & Cameron with SUNSTATE Equipment Co.
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOUREMN	FORMAN
Valcon	Working on Garage grade beams		7	1
B&J Mechanical	Installing drains in Garage / installing underground plumbing Building 2 Section D		9	1
Rumsey	moving spoils to a location where it can be hauled out.			1
Thompson Excavating	Bruce showed up @ 7:30am but left by 7:45am			0
Quick Roofing	Finished roof on Mock Up			1
Victor & Jaun w/ BTR	Came to check on progress of concrete forms			2
Steven Winn	Came by to check on progress of Rumsey on Sewer			1
Sam Sterling	Came by to check progress on job site			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		26	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D	8	Bobcat T550							
John deer 310K	8	John Deer 75D	8						
Hitachi 240 LC	8	Takeuchi TB235	8						
JD 644		Roller							
JD 544	8								

DAILY FIELD REPORT

SDC
Construction

DATE: 2/10/2015

DAY: Tuesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 48 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

55 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER: LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF				
Jose w/ Valcon	Check on job			1
Jim Clair w/Rumsey	Check job			1
Adolphus Oji	check on progress			1
Sam Sterling	check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT

SDC
Construction

DATE: 2/16/2025
DAY: Monday

PROJECT: Villas at Vanston Park
ADDRESS: 4540 Gus Thomasson rd

TEMP. / WEATHER: 45 A.M. Clear Cloudy Rain Mud Windy Snow Freeze
31 P.M. Clear Cloudy Rain Mud Windy Snow Freeze

Project Number

SITE CONDITIONS: muddy & wet
INSPECTIONS CALLED:
INSPECTIONS MADE:
DELIVERIES MADE:
VISITORS ON SITE:
BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		NUMBER LABOR	NUMBER JOUREMN	
	Totals			

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on back of page.

Robert Mendez
Project Superintendent

DATE: 2/23/2015

DAILY FIELD REPORT

SDC Construction

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 25 Ice A.M. Clear **Cloudy** **Rain** Mud Windy Snow **Freeze**

30 ice P.M. Clear **Cloudy** **Rain** Mud Windy Snow **Freeze**

SITE CONDITIONS: Frozen

INSPECTION Called
INSPECTIONS MADE:
DELIVERIES MADE:
VISITORS ON SITE:
BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				
	Totals			
			1	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DATE: 2/24/2015

DAILY FIELD REPORT SDC Construction

DAY: Tuesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 23 Ice A.M. Clear **Cloudy** Rain Mud Windy Snow **Freeze**

28 ice P.M. Clear **Cloudy** Rain Mud Windy Snow **Freeze**

SITE CONDITIONS: Frozen

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals				
		2		

WORKFORCE NUMBER

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DATE: 2/25/2015

DAILY FIELD REPORT

SDC
Construction

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:								
33	A.M.	Clear	**Cloudy**	**Rain**	**Mud**	Windy	Snow	**Freeze**
32	P.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	**Snow**	**Freeze**

SITE CONDITIONS: Muddy

INSPECTION Called
INSPECTIONS MADE:
DELIVERIES MADE:
VISITORS ON SITE:
BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER: LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
Sam Sterling	check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			3	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Volvo Loader							

DAILY FIELD REPORT — SDC Construction

DATE: 2/26/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 37 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

37 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called	4524 Gus Thomasson Rd. Steel Walls & Columns (Conf #b86ba2) Garage	
INSPECTIONS MADE:		
DELIVERIES MADE:		
VISITORS ON SITE:	Jesus w/ J&R Welding came by to look @ plans	1
BACKCHARGES:		

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF	Building scaffolding		4	1
A CLEANER SOLUTION	Cleaned out inlet protection		2	1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals				
			11	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Inspector Brian Bader called Robert to inform him no more inspections without Submittals on Fire in Garage.

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT SDC Construction

DATE: 2/27/2015

DAY: Friday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 27 A.M. Clear **Cloudy** Rain **Mud** Windy Snow **Freeze**

27 P.M. Clear **Cloudy** Rain **Mud** Windy **Snow** **Freeze**

SITE CONDITIONS: Snow, m

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon				
Rumsey				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals				
			8	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Draw meeting @ 11:00am 8 people attended

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT

SDC
Construction

DATE: 3/2/2015

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:									
	34 Fog	A.M.	Clear	**Cloudy**	**Rain**	**Mud**	Windy	Snow	Freeze
	36 Fog	P.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	Snow	Freeze

SITE CONDITIONS: Mud

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
Time Warner Cable	met with Allen George and Joe Toone to discuss cable routes			2
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			4	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT SDC Construction

DATE: 3/3/2015

DAY: Tuesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 42 fog A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

60 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called	
INSPECTIONS MADE:	1st level stemwall (PASSED)
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF	closing in 1st level walls		5	2
Adolphus Oji	Here for Sub Meeting and to check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			10	

WORKFORCE NUMBER

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Sub meeting @ 9:00 am

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT

SDC
Construction

DATE: 3/4/2015

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 52 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

46 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			2	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DATE: 3/9/2015

DAILY FIELD REPORT SDC Construction

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 47 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

50 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF	Worked till 9 am on columns rained out		5	1
Sam Sterling	Came to look at progress and mud			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		9	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Today was the 17th rain day since start of project.

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT SDC Construction

DATE: 3/12/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 51 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

66 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy b

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon	Pouring Columns		6	2
Rumsey	Draining holes and moving materials		5	1
A Cleaner Solution	repairing silt fence		1	1
Sam Engineering	Taking samples of concrete			1
Steven Winn	Checking on Rumseys progress			1
Sam Sterling	to check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals			21	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8						
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC	8	BMP Roller							
JD 544	8	Skytrack	8						

DAILY FIELD REPORT

SDC Construction

DATE: 3/13/2015

DAY: Friday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 55 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

55 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: wet

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

WORKFORCE NUMBER

Subcontractor		LABOR	JOURNEMN	FORMAN
B&J Mechanical				
Valcon	Removing Forms from Columns		4	2
Rumsey				
Viking Fence	Installing fence post @ AT&T		1	1
Sam Sterling	Met with Armando (Overall Concrete) also Victor Castro and partener attended			4
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals			14	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 18th rain day

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack	4						

DATE: 3/14//2015

DAILY FIELD REPORT

SDC
Construction

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:									
57	A.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	Snow	Freeze
58	P.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	Snow	Freeze

SITE CONDITIONS: Mud

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
SFC	Removing Forms from Columns / Forming more Columns		3	2
Overall	Pumping water out of Grade Beams Building 2 Section D		2	1
Viking Fence	Finishing install of fence @ AT&T		3	1
Sam Sterling				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				
Totals			13	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack	8						

DAILY FIELD REPORT SDC Construction

DATE: 3/18/2015

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 59 A.M. Clear **Cloudy** **Rain** Mud Windy Snow Freeze
64 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	Randy Rice w/ Truss Rite 1
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEMN	FORMAN
B&J Mechanical	Fixing broken pipes Building 2 section D		3	1
Valcon & SCF	Building scaffolding for Beams up to 2nd floor		8	2
Rumsey	Moving materials/ Installing 8" waterline behind AT&T		5	1
Overall	Cleaning Grade Beams and installing Poly, Post Tension and rebar Building 2 Section D		11	1
Sam Sterling	Checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		36	

WORKFORCE NUMBER

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	6						
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC	6	BMP Roller							
JD 544	6	Bobcat 323	3						

DAILY FIELD REPORT — SDC Construction

DATE: 3/19/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 60 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

70 P.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	Scheduled pest control Building 2 section D 3/20/2015 am
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES / WORKFORCE NUMBER

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	Repairing broken pipes Building 2 section D		2	1
Valcon & SCF	Removing Forms, Patching walls and building scaffolding for grade beams up to 2nd floor		13	3
Rumsey	Installing 8" waterline behind AT&T		5	1
Overall Concrete	Cleaning grade beams, installing Poly, Post Tension Cables and Rebar		10	1
Sam Sterling	Cracking the whip			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			39	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Installed 2nd construction entrance north end of property off Forest Dr.

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8						
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC	8	BMP Roller							
JD 544	8	Skytrack	8						

DATE: 3/20/2015

DAILY FIELD REPORT

SDC
Construction

DAY: Friday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 57 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

55 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Mud

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	4 trucks from RCI w/ post tension cables, rebar, etc... For Valcon
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

WORKFORCE NUMBER

Subcontractor		LABOR	JOURNEMN	FORMAN
B&J Mechanical	Fixing broken pipes Building 2 Section D		2	1
SCF	Building scaffolding for grade beams up to 2nd level		13	2
Rumsey	8" waterline behind AT&T		5	1
Overall Concrete	Finished Building 2 Section D		10	1
Advantage pest Control	Finished Building 2 Section D			1
Valcon	Unloading Materials		2	2
Sam Engineering	Testing moisture on 8" waterline behind AT&T			1
Sam Sterling				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		41	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack							

DAILY FIELD REPORT SDC Construction

DATE: 3/21/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 57 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

55 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Mud

INSPECTION Called	electric ground for bldg. # 2 sec D , foundation steel & post tension cables bldg. # 2 sec D
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
SCF	Building scaffolding for grade beams up to 2nd level		13	2
Rumsey				
Overall Concrete	working on post tension cables & steel for foundation Building 2 Section D		8	1
Advantage pest Control				
Valcon				
Sam Engineering				
Sam Sterling				
ASSISTANT SUPERINTENDANT				
SUPERINTENDANT				1
	Totals		20	4
			24	

WORKFORCE NUMBER

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Robert Mendez
Project Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack							

DATE: 4/6/2015

DAILY FIELD REPORT

SDC
Construction

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:									
63	A.M.	Clear	**Cloudy**	**Rain**	**Mud**	Windy	Snow	Freeze
82	P.M.	Clear	Cloudy	Rain	Mud	Windy	Snow	Freeze

SITE CONDITIONS: Mud 1/2 Rain

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEMN	FORMAN
B&J Mechanical				
Valcon	Spred rock to tready for 3:00 am Pour on Garage		2	1
Rumsey				
SCF				
Renegade Concrete	Spred rock and bailing water Building 2 Section D 7:00 am pour		2	2
Sam Sterling	checking on progress			182
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: SDC Buying 10 loads of rock to spread so we can pour concrete tomorrow.

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat T190	8				
John deer 75D		Takeuchi TB 235		Bobcat S185					
Hitachi 240 LC		BMP Roller		Bobcat 325					
		Skytrack 1							
JD 544		Skytrack 2							

DATE: 4/13/2015

DAILY FIELD REPORT

SDC Construction

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 70 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

67 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called	
INSPECTIONS MADE:	14 Columns 0n 2nd floor of Garage (Passed)
DELIVERIES MADE:	3 loads of road base
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEMN	FORMAN
B&J Mechanical				
Valcon	Prep for pour of concrete on 14 columns 2nd floor of Garage		1	1
Rumsey	Moving Fire Riser by garage behind AT&T		4	1
SCF	Pouring Columns 2nd floor garage		7	2
Renegde Concrete				
Sam Sterling	Checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		19	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Rained out by 1:00 pm

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550		Bobcat 190					
John deer 75D		Takeuchi TB 235		Bobcat325					
Hitachi 240 LC		BMP Roller							
		Skytrack 1							
JD 544		Skytrack 2							

DATE: 4/14/2015

DAY: Tuesday

DAILY FIELD REPORT SDC Construction

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 57 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

61 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical	Digging Gut Line Building 2 Section C		1	1
Valcon	Grading Ramp up to 2nd floor Garage		5	1
Rumsey	Installing 12" & 18" Storm Drain Under Broadway		4	1
SCF	Building scaffolding (Framing) Deck 3rd floor Garage		12	2
Renegade Concrete	Cleaning concrete spoils Building 2 Section D Areas 1,2 & 4		5	1
Adolphus oji	Here for Sub Meeting and to check on progress			1
Sam Sterling	Here for Sub Meeting and to check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			37	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Sub meeting @ 9:00 am

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat 190	8				
John deer 75D	8	Takeuchi TB 235	8	Bobcat 325	8				
Hitachi 240 LC	8	BMP Roller		Bobcat e26	4				
		Skytrack 1	8						
JD 544	8	Skytrack 2	8						

DATE: 4/18/2015

DAILY FIELD REPORT

SDC
Construction

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 68 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

79 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Mud rain 2" last nite , all wet

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

WORKFORCE NUMBER

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
SCF			0	0
Rumsey				
			0	0
Advantage pest Control				
Valcon	working on steel for ram to 2nd floor garage		5	1
Sam Engineering				
ASSISTANT SUPERINTENDANT				
SUPERINTENDANT				1
	Totals		5	2
			7	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Robert Mendez
Project Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack							

DAILY FIELD REPORT

SDC
Construction

DATE: 4/23/2015
DAY: Thursday

PROJECT: Villas at Vanston Park
ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 70 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze
70 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	Plumbing Gut line Building 2 section C Passed(no Tag given Inspection was Partial)
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	Digging Gut line Building 2 Section C		2	2
Valcon	Misc. cleaning and Bobcat work		1	1
Rumsey				
SCF	Building Scaffolding on ramp of Garage 1st to 2nd floor		11	2
Renegade Concrete	Digging Grade Beams and grading Building 1 Section B		3	1
Sam Sterling	Checking on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		26	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D	8	Bobcat T550	8	Bobcat 190		8			
John deer 75D	8	Takeuchi TB 235		Bobcat 325		8			
Hitachi 240 LC		BMP Roller	8	Bobcat e26		8			
Volvo Excavator		Skytrack 1	8	GHEL 70		8			
JD 544		Skytrack 2							

DATE: 4/25/2015

DAILY FIELD REPORT SDC Construction

DAY: Friday

PROJECT: Villas at Vanston Park **ADDRESS:** 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 60 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

74 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FORMAN
B&J Mechanical	Backfil Main Gut line		1	1
Valcon	Supervising			1
Rumsey				
SCF	Building Scaffolding (Framing) Garage Ramp		12	2
Sam Sterling				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			19	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Rain occoured throughout the day.

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat 190					
John deer 75D		Takeuchi TB 235		Bobcat 325					
Hitachi 240 LC		BMP Roller		Bobcat e26					
Volvo Excavator									
JD 544									

DAILY FIELD REPORT SDC Construction

DATE: 4/28/2015

DAY: Tuesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 54 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

57 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Rain Day Muddy

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMAN	FOREMAN
B&J Mechanical				
Valcon	Supervising			1
Rumsey				
SCF	Building Scaffolding (Framing) 2nd to 3rd floor garage		9	2
Adolphus Oji	Here for Sub Meeting and to check on progress			1
Sam Sterling	Here for Sub Meeting and to check on progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
		16		

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Sub meeting @ 9:00 am

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat 190					
John deer 75D		Takeuchi TB 235		Bobcat 325					
Hitachi 240 LC		BMP Roller		Bobcat e26					
Deer 200		Skytrack 1	8						
JD 544		Skytrack 2							

DAILY FIELD REPORT SDC Construction

DATE: 5/2/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 62 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

81 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: CLEAR

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor	Activity	LABOR	JOURNEMN	FORMAN
B&J Mechanical	working on damage under ground sewer pipes in bldg. # 1 sec A , back filling gut line bldg. # 2 sec C		2	1
SCF	Building scaffolding for grade beams up to 2nd level		5	2
Rumsey				
Overall Concrete	working on foundation grage beams Building 1 Section A , working on back out bldg. # 1 sec		8	1
Advantage pest Control	will be here on Sunday 5/3/15 to spray pest control in bldg. # 1 sec A			
Valcon	installing steel & post tension cables 2nd floor garage		7	1
Sam Engineering				
Sam Sterling				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		22	7
			29	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Robert Mendez
Project Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack							

DAILY FIELD REPORT SDC Construction

DATE: 5/4/2015

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 68 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: 80 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMEN	FORMAN
B&J Mechanical				
Valcon	Tie/ Setting Steel columns 3rd floor garage			
Rumsey	Moving materials		2	1
			3	1
SCF	framing scaffolding 3rd floor of garage		8	1
Renegade	Wrecking forms Building 1 Section A		2	1
Sam Sterling	checking progress			
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		15	6
			21	

WORKFORCE NUMBER

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 49th day of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
		Takeuchi TB 235							
Hitachi 240 LC		Skytrack 1	4						
		Skytrack 2	4						
JD 544	4								

DAILY FIELD REPORT

SDC
Construction

DATE: 5/9/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:

72	A.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	Snow	Freeze
74	P.M.	Clear	**Cloudy**	**Rain**	Mud	Windy	Snow	Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF	Wrecking scaffolding 1st floor Garage / Building scaffolding 3rd floor Garage		11	1
Renegade				
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				
	Totals			
			14	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550		Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC				GHEL 70					
		skytrack 1							
JD 544		Skytrack 2							

DATE: 5/13/2015

DAILY FIELD REPORT

SDC
Construction

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 62 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze
P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Rain Started @ 3pm recorded over 1/2" in 30 min

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER: LABOR	JOURNEMN	FORMAN
B&J Mechanical	Fixing pipes Building 1 Section A		1	1
Valcon	Tie Steel ,Post tension cables and rebar 2nd floor of garage		7	2
Rumsey	sewer install Gus Thomasson Rd.		5	1
SCF	framing scaffolding 3rd floor of garage		11	1
Renegade	Wrecking Forms Building 1 Section b		4	1
RCI	Post tension Pull Building 1 section B / Post tension pull Building 2 Section D Area 2		1	1
Sam engineering	Post tension Pull Building 1 section B / Post tension pull Building 2 Section D Area 2			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
		40		

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC		Skytrack 1	8	GHEL 70					
		Skytrack 2	8						
JD 544									

DAILY FIELD REPORT

SDC
Construction

DATE: 5/14/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:								
67	A.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	Snow	Freeze
83	P.M.	Clear	**Cloudy**	Rain	Mud	Windy	Snow	Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

WORKFORCE NUMBER

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	Repairing pipes Building 1 Section A / installing storm drain 1st floor garage		1	1
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		6	2
Rumsey				
SCF	framing scaffolding 3rd floor of garage		13	1
Renegade	Sand Bags Building 1 Section A		9	1
Sam Engineering	Approved Building 1 Section A for pre pour slab/ checked Building 1 Section B Cables			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			38	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC		Skytrack 1	8	GHEL 70					
Volvo Trac Hoe		Skytrack 2							
JD 544									

DATE: 5/15/2015

DAILY FIELD REPORT

SDC
Construction

DAY: Friday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 70 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze
74 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Rain Mu

INSPECTION Called	
INSPECTIONS MADE:	Electrical rough 3rd floor Garage Conf.#e5cc76/Concrete 3rd floor slab Conf.#437141
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage/ post tension pull 2nd floor		7	2
Rumsey				
SCF	framing scaffolding 3rd floor of garage		13	1
Renegade	took a trenching machine still have 2 machines sitting on slab B2 SD need gone			2
RCI	Post tension pull building 2 section d area 2		1	1
Sam Engineering	Recording Post tension pull Building 2 section d area 2 /also Garage 2nd floor		2	1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals			33	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: This Is our 44th day of rain or mud since keeping records 10/29/2014
RCI delivered to Valcon (REBAR)

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550		Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC		skytrack 1	4	GHEL 70					
		skytrack 2							
JD 544									

DAILY FIELD REPORT

SDC
Construction

DATE: 5/20/2015

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 62 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

81 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: CLEAR muddy

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

Subcontractor	CONSTRUCTION ACTIVITIES	WORKFORCE NUMBER: LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	checking for pipes on bldg. # 1 sec A for damage pipes		0	1
SCF	Building scaffolding for grade beams up to 3rd level		13	1
Rumsey	working on sanitary sewer manhole by bldg. # 1 sec B		4	1
renegade concrete	poured bldg. # 1 sec A ,		14	1
Advantage pest Control				
Valcon	poured remaining balance of columns on 2nd floor		1	5
Sam Engineering	checking bldg. # 1 sec A slab pour , checked post tension cables in bldg. # 2 sec d area 2		2	0
Sam Sterling				
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		34	11
			45	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes:

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Robert Mendez
Project Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544		Skytrack							

DAILY FIELD REPORT

SDC Construction

DATE: 5/21/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 54 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

67 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Rain

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER: LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon	Supervising			1
Rumsey	Prep for water crossing Gus Thomasson Rd. 10 pm 5/4/2015		5	1
SCF	wrecking scaffolding garage/ Framing scaffolding 3rd floor garage		7	2
Renegade				
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
		19		

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: Today is the 47th day of rain or mud.

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550		Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC		Skytrack 1		GHEL 70					
Volvo Excavator		Skytrack 2		Cat 140G					
JD 544									

DAILY FIELD REPORT

SDC Construction

DATE: 5/22/2015

DAY: Friday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 60 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

69 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		7	2
Rumsey	Backfill Manhole on Gus Thomasson Rd.		5	1
SCF	framing scaffolding 3rd floor of garage/ Wrecking scaffolding Garage		15	2
Renegade	repairing brick ledges		1	
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		36	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 48 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC		Skytrack 1	8	GHEL 70					
Volvo Excavator	8	Skytrack 2	8						
JD 544	8								

DAILY FIELD REPORT — SDC Construction

DATE: 5/25/2015
DAY: Monday

PROJECT: Villas at Vanston Park
ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 70 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze
80 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Rain Muddy

INSPECTION Called:
INSPECTIONS MADE:
DELIVERIES MADE:
VISITORS ON SITE:
BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF				
Renegade				
Adolphus Oji	checking progress			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
		4		

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 50th rain or mud day. Memorial Day

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DAILY FIELD REPORT SDC Construction

DATE: 5/26/2015

DAY: Tuesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 67 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

84 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	Garage columns (20) Confirmation # 16b665
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEMN	FORMAN
B&J Mechanical	Drains in Garage		2	1
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage/ Columns 3rd floor garage		7	2
Rumsey	showed up @ 7am but had to leave due to muddy conditions		5	1
SCF	framing scaffolding 3rd floor of garage / wrecking scaffolding 1st floor		8	1
Renegade	too muddy			
Thunderhorse	Here for meeting			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 52 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550		Bobcat 325					
		Takeuchi TB 235		Bobcat e26					
Hitachi 240 LC		Roller		GHEL 70					
		Skytrack 1							
JD 544		Skytrack 2							

DAILY FIELD REPORT

SDC
Construction

DATE: 5/27/2015

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 65 A.M. **Clear** Cloudy Rain **Mud** Windy Snow Freeze

84 PT Cloudy P.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

SITE CONDITIONS: Drying

INSPECTION Called	
INSPECTIONS MADE:	3rd floor columns Garage (PASSED)
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	Garage drains / repairs Building 1 Section B		2	1
Valcon	Supervising			1
Rumsey				
SCF	framing scaffolding 3rd floor of garage / Wrecking scaffolding garage		10	1
Renegade	removing some lumber from jobsite/ Removing Bobcat 325 Excavator		2	2
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
		22		

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW

1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 53 days of rain or mud In May so far rain on 20 of 27 days. Concerning steel plates over holes on Gus Thomasson

City of Mesquite said between 4 & 15 cars were damaged 5/23/2015 (Saturday) night. On Gus Thomasson Rd. near JR'S Catfish

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat e26					
		Takeuchi TB 235							
Hitachi 240 LC									
		Skytrack 1	8						
JD 544		Skytrack 2	8						

DAILY FIELD REPORT SDC Construction

DATE: 5/28/2015

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 72 A.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

88 PT. Cloudy P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Drying

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor	Activity	LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon	Cleaning up around Garage / tieing steel 3rd floor of Garage		11	2
Rumsey	tieing in 8" water line on Gus Thomasson Rd.		4	1
SCF	framing scaffolding 3rd floor of garage		8	1
Renegade				
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals			30	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 54 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550	8	Bobcat e26					
		Takeuchi TB 235		GHEL 70					
Hitachi 240 LC									
		Skytrack 1	8						
JD 544	8	Skytrack 2	8						

DAILY FIELD REPORT SDC Construction

DATE: 5/29/2015
DAY: Friday

PROJECT: Villas at Vanston Park
ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 65 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze
79 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: Muddy

INSPECTION Called
INSPECTIONS MADE:
DELIVERIES MADE:
VISITORS ON SITE:
BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		7	2
Rumsey				
SCF	framing scaffolding 3rd floor of garage / Wrecking scaffolding 1st floor garage		12	2
Renegade				
Sam Engineering	Recording post tension pulls on Building 1 Section A		1	1
RCI	Post tension pulls Building 1 Section A		1	1
Adolphus oji	checking progress			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		31	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 55 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
		Bobcat T550	8						
		Takeuchi TB 235							
Hitachi 240 LC									
		Skytrack 1	8						
JD 544		Skytrack 2	8						

DAILY FIELD REPORT SDC Construction

DATE: 5/30/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 61 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

72 P.M. Clear **Cloudy** Rain **Mud** Windy Snow Freeze

SITE CONDITIONS: rain 2"

INSPECTION Called

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEYMAN	FOREMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF	Wrecking scaffolding 1st floor garage		6	1
Renegade				
RCI				
Adolphus oji				
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				
SUPERINTENDANT	pumping water from fire lane			1
Totals			9	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 56 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Robert Mendez
Project Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
		Bobcat T550	8						
		Takeuchi TB 235							
Hitachi 240 LC									
		Skytrack 1	8						
JD 544		Skytrack 2	8						

DATE: 6/12/2015

DAILY FIELD REPORT SDC Construction

DAY: Friday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 78 A.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

92 P.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		6	2
Rumsey	Adjust steel plates on Gus Thomasson RD./ Turned on water too Hydrants on Forest Dr.		1	1
SCF	framing scaffolding 3rd floor of garage/ wrecking 1st floor scaffolding		11	1
Renegade				
Challenge	unloading lumber with skyjack/ Pop out on Building 1 Section A & B		4	1
Thompson	Grading Broadway and garage entrance/ grading fire lane by Taco Bell			2
Rafiel Mendez	Cleaning slab Building 1 Section A & B/ cleaned trash on jobsite	1		
Adolphus oji	checking progress			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals				
		35		

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 56 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
310J Backhoe	8	Bobcat T550	8						
Cat Grader	8								
		Skytrack 1	8						
		Skytrack 2	8						
		Skyjack	8						

DAILY FIELD REPORT SDC Construction

DATE: 6/13/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 76 A.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

90 P.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

SITE CONDITIONS: rain at 3:00 pm 1/4 inch

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOURNEMN	FORMAN
B&J Mechanical				
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		6	2
Rumsey				
SCF	framing scaffolding 3rd floor of garage/ wrecking 1st floor scaffolding		11	1
Renegade				
Challenge	unloading lumber with skyjack/ Pop out on Building 1 Section A & B		4	1
Thompson				
Rafael Mendez	Cleaning slab Building 1 Section A & B/ cleaned trash on jobsite	1		
Adolphus oji				
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				
SUPERINTENDANT				1
	Totals	1	21	6
			28	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 56 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Robert Mendez
Project Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
310J Backhoe	8	Bobcat T550	8						
Cat Grader									
		Skytrack 1	8						
		Skytrack 2	8						
		Skyjack	8						

DAILY FIELD REPORT

SDC
Construction

DATE: 6/15/2015

DAY: Monday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 76 A.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

87 P.M. Clear **Cloudy** Rain Mud Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	Steel columns Garage 3rd floor Conf#02dc45 AM inspection
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

WORKFORCE NUMBER

Subcontractor		LABOR	JOURNEMN	FOREMAN
B&J Mechanical	Working drains on garage/ Chipping on slabs building 2 Section D		2	1
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		5	2
Rumsey				
SCF	framing scaffolding 3rd floor of garage / Wrecking scaffolding 1st floor garage		14	1
Renegade				
Challenge	Unloading lumber w/ Skyjack / pop out on Building1 Section A & B		5	2
Thunderhorse	Installing temp poles building 2 section D		1	1
Adolphus oji	checking progress			1
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
Totals			38	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 58 days of rain or mud / Fire Marshall gave us permission to start framing on Building 2 Section D 6/16/2015

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
Cat Grader	8	Bobcat T550	8						
310J Deer Backhoe	8								
		Skytrack 1	8						
		Skytrack 2	8						
		Skyjack	8						

DAILY FIELD REPORT

SDC Construction

DATE: 6/16/2015

DAY: Tuesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:

75	A.M.	Clear	**Cloudy**	**Rain**	Mud	Windy	Snow	Freeze
81	P.M.	Clear	**Cloudy**	**Rain**	**Mud**	Windy	Snow	Freeze

SITE CONDITIONS: Rain in afternoon 1/4" site muddy

INSPECTION Called	
INSPECTIONS MADE:	8 Columns on Garage (PASSED)
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical				
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage		5	2
Rumsey				
SCF	framing scaffolding 3rd floor of garage / Wrecking scaffolding 1st floor Garage		14	2
Renegade				
Challenge	Framing building 2 Section D		10	2
Adolphus oji	checking progress here for sub meeting			1
Sam Sterling	checking progress here for sub meeting			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		39	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 59 days of rain or mud Renegade concrete needs to take 2 ditch whitches off jobsite

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
Cat Grader		Bobcat T550							
310 J Backhoe	6								
Deer Loader		Skytrack 1	8						
		Skytrack 2	8						
		Skyjack	8						

DAILY FIELD REPORT

SDC
Construction

DATE: 6/17/2015

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 70 A.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

74 P.M. Clear **Cloudy** **Rain** **Mud** Windy Snow Freeze

SITE CONDITIONS: Rain Mud

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	Dennis Garcia picked up a cord from Sam
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER: LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF				
Renegade				
Viking Fence	Repair 2 gates		1	1
Adolphus oji	checking progress			
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals			
			6	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 60 days of rain or mud No production today.

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
		Bobcat T550							

DATE: 6/18/2015

DAILY FIELD REPORT SDC Construction

DAY: Thursday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:								
74	A.M.	Clear	**Cloudy**	Rain	**Mud**	Windy	Snow	Freeze
92	P.M.	Clear	**Cloudy**	Rain	Mud	Windy	Snow	Freeze

SITE CONDITIONS: Muddy, Sunny

INSPECTION Called:

INSPECTIONS MADE:

DELIVERIES MADE:

VISITORS ON SITE:

BACKCHARGES:

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEMN	FORMAN
B&J Mechanical	repairing (Chipping) pipes Building 1 Sections A & B / Also Building 2 Section D		1	1
Valcon	Tie Steel ,Post tension cables and rebar 3rd floor of garage/ Pour 8 columns 3rd floor		7	2
Rumsey	Looking for leak off Oates / Clorinating 8" water line on Broadway		1	2
SCF	framing scaffolding 3rd floor of garage/ Wrecking scaffolding ramp & 2nd floor		10	2
Renegade				
Challenge	Framing Building2 Section D / Build up Building 1 Sections A&B		38	2
Joseph Oji	Checking progress Met with Sam & Robert			1
Adolphus oji	checking progress			
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		70	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 61 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
310 J Deer Backhoe	4	Bobcat T550	8						
Cat Gader									
		Skytrack 1	8						
		Skytrack 2	8						
		Skyjack	8						

DAILY FIELD REPORT

SDC Construction

DATE: 6/20/2015

DAY: Saturday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER:

74	A.M.	Clear	**Cloudy**	Rain	Mud	Windy	Snow	Freeze
84	P.M.	Clear	**Cloudy**	Rain	Mud	Windy	Snow	Freeze

SITE CONDITIONS:

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	Top out Building 2 Section D		3	1
Valcon	Supervising			1
Rumsey	Backfill repairs / Clorine in lines		3	1
SCF	framing scaffolding to complete 3rd floor of garage		9	2
Renegade				
Challenge	Framing building 2 Section D / Setting floor trusses building 2 section d		14	2
Adolphus oji	checking progress			
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				
	Totals		38	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 61 days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
Cat Grader		Bobcat T550	8						
Cat 93C Loader	8	GHEL forklift	8						
Hitachi 240 LC	8	Skytrack 1	8						
		Skytrack 2	8						
		Skyjack forklift	8						

DAILY FIELD REPORT SDC Construction

DATE: 6/26/2015

DAY: Sunday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 74 A.M. Clear Cloudy Rain Mud Windy Snow Freeze

74 P.M. Clear Cloudy Rain Mud Windy Snow Freeze

SITE CONDITIONS: Mud

Fathers Day & The First Day of Summer

INSPECTION Called	
INSPECTIONS MADE:	
DELIVERIES MADE:	
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		LABOR	JOUREMN	FORMAN
B&J Mechanical				
Valcon				
Rumsey				
SCF				
Renegade				
Challenge				
Thompson				
Adolphus oji	checking progress			
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				
	Totals			
			2	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 62 Days of rain or mud

( ) Please note any Phone orders, Scheduled events or Important information on seperate page.

Jim Wester

Project Assistant Superintendent

Equiptment	HRS	Equptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
John deer 35D		Bobcat T550							
John deer 75D		Takeuchi TB 235							
Hitachi 240 LC		BMP Roller							
JD 544									

DATE: 9/9/2015

DAILY FIELD REPORT

SDC Construction

DAY: Wednesday

PROJECT: Villas at Vanston Park

ADDRESS: 4540 Gus Thomasson Rd.

TEMP. / WEATHER: 75 A.M. Clear Cloudy Rain Mud Windy Snow Freeze

83 P.M. Clear Cloudy Rain Mud Windy Snow Freeze

SITE CONDITIONS:

INSPECTION Called	Electrical rough B2SD Conf#88d564
INSPECTIONS MADE:	
DELIVERIES MADE:	1 truck Densglass
VISITORS ON SITE:	
BACKCHARGES:	

CONSTRUCTION ACTIVITIES

Subcontractor		WORKFORCE NUMBER LABOR	JOURNEYMEN	FOREMAN
B&J Mechanical	Dains B2SD/ Moving pipes 3rd floor B1SB		4	1
Valcon	Framing stem walls / cleaning Garage		6	1
Rumsey				
SCF	Framing stem walls / cleaning Garage		8	2
Renegade				
Challenge	Punch out 1st floor B1SD / Framing slab B2SC		15	2
Thunderhorse	Wiring 2nd & 3rd floors B2SD		4	1
J&B Welding				
Maxium	Attic Dry system B2SD		2	1
CDF	Install channel and buildng furdowns / Taping furdowns B2SD 2nd floor		5	1
Citi Aire			1	1
Digitec	running cat 5 1st floor B2SD		1	1
Quick Roofing				
Impact Plaster	Finishing 1st floor garage Cinder Block		3	2
Adolphus oji	checking progress			
Sam Sterling	checking progress			1
ASSISTANT SUPERINTENDANT				1
SUPERINTENDANT				1
	Totals		49	16
			65	

IF THE FOLLOWING EVENTS HAVE OCCURRED, PLEASE DESCRIBE IN SHADED SPACE BELOW
1) Change Requests, 2) Design Problems, 3) Delays, 4) Accidents, 5) Problems on Job or with Subs, 6) Other

General Notes: 69 dys of rain or mud Robert notified all Low Voltage Companies to get started

( ) Please note any Phone orders, Scheduled events
or Important information on seperate page.

Jim Wester
Project Assistant Superintendent

Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	HRS	Equiptment	Hrs
Boom lift 1	8	Skytrack 1	8						
Boom lift 2	8	Skytrack 2	8						
		GHEL forkl 1	8						
GHEL forklift	8	GHEL forkl 2	8						

1f

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Woodside Apartments was submitted to the Department on September 1, 2015;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on August 21, 2015, and will expire on January 18, 2016;

WHEREAS, the proposed issuer of the bonds is the Texas State Affordable Housing Corporation; and

WHEREAS, the EARAC recommends the issuance of the Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $292,329 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Woodside Apartments is hereby approved as presented to this meeting.

BACKGROUND

General Information: Woodside Apartments, located in Palestine, Anderson County, involves the acquisition and rehabilitation of 92 units, all of which will be rent and income restricted at 60% of Area Median Family Income. The development will serve the general population and is zoned appropriately. The census tract (9506.00) has a median household income of $34,833, is in the 4th quartile and has a poverty rate of 21.6%.

Organizational Structure: The Borrower is DHI Woodside Apartments, LLC. The General Partner is DHI Woodside Associates, LLC; which includes Dawson Holdings, Inc., 100% owned by Thomas Dawson, DHI Holdings, LLC; which includes Dawson Holdings, Inc. and the Thomas Dawson and Jean Pei Loo Trust and the last member of the general partner is Tim Fluetsch as an individual. In accordance with 10 TAC §1.301(d)(1), Woodside Apartments has been designated as a Small Portfolio Category 1 application.

Public Comment: The Department received letters of support from City of Palestine Mayor Bob Herrington and City Manager Wendy Ellis. No letters of opposition have been received.

City of Palestine
504 N. Queen St.
Palestine, TX 75801

Bob Herrington
Mayor

Phone: (903) 723-8414

mayor@palestine-tx.org

June 08, 2015

Texas State Affordable Housing Corporation
2200 E. Martin Luther King Jr, Blvd
Austin, TX 78702

Re: Woodside Village, 2020 Martin Luther King Jr Blvd, Palestine, TX

Texas State Affordable Housing Corporation

DHI Woodside Apartments, LLC has proposed a development for affordable rental housing of 100 units located at 2020 Martin Luther King Jr Boulevard in Palestine, Anderson County, Texas and is submitting an application to the Texas State Affordable Housing Corporation for the issuance of private activity bonds.

I am the Mayor of the City of Palestine and I support the proposed development.

Sincerely,

Bob Herrington
Mayor

City of Palestine
504 N. Queen St.
Palestine, TX 75801

Wendy Ellis
City Manager

Phone: (903) 723-8415

wellis@palestine-tx.org

June 8, 2015

Texas State Affordable Housing Corporation
2200 E. Martin Luther King Jr, Blvd
Austin, TX 78702

Re: Woodside Village, 2020 Martin Luther King Jr Blvd, Palestine, TX

Texas State Affordable Housing Corporation

DHI Woodside Apartments, LLC has proposed a development for affordable rental housing of 92 units located at 2020 Martin Luther King Jr Boulevard in Palestine, Anderson County, Texas and is submitting an application to the Texas State Affordable Housing Corporation for the issuance of private activity bonds to fund the project.

As the City Manager of the City of Palestine, I have reviewed their plans, and I believe the project will be beneficial for our community. And I support the proposed development.

Sincerely,

Wendy Ellis
City Manager

1g

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution No. 16-004 and a Determination Notice of Housing Tax Credits for Williamsburg Apartments

RECOMMENDED ACTION

WHEREAS, the Board approved the inducement resolution for Williamsburg Apartments at the September 3, 2015, Board meeting;

WHEREAS, approval of the inducement allowed staff to submit the application to the Bond Review Board and a Certificate of Reservation was issued on September 29, 2015, with a bond delivery deadline of February 26, 2016;

WHEREAS, the applicant has a Category 3 portfolio which was reviewed by the Executive Award and Review Advisory Committee ("EARAC"); and

WHEREAS, the EARAC recommends the issuance of Multifamily Housing Revenue Bonds Series 2014 and the issuance of a Determination Notice for Williamsburg Apartments;

NOW, therefore, it is hereby

RESOLVED, that the issuance of up to $24,000,000 in tax-exempt Multifamily Housing Revenue Bonds Series 2016 for Williamsburg Apartments, Resolution No. 16-004 is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of $1,215,260 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website is hereby approved in the form presented to this meeting and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Chapter 1371, Texas Government Code, as amended, and under Chapter 2306, Texas Government Code, as amended, the Department's Enabling Statute (the "Statute"), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. (*The Statute 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 faith, credit or taxing power of the State of Texas.)

The Williamsburg Apartments consists of the rehabilitation and acquisition of 418 existing units serving the general population in Grand Prairie, Dallas County, and the site is currently zoned appropriately. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income ("AMFI") that must be served; however, all of the units will be rent and income restricted at 60% AMFI. The property was originally constructed in 1984, subsequent to the ban of lead-based paint that occurred in 1978. While this should be of minimal concern, if any concentration is found it will be handled accordingly. Moreover, if any asbestos containing materials are revealed and expected to be disturbed during renovation, an Operations and Maintenance ("O&M") plan must be followed.

The Development was previously awarded an allocation of competitive Housing Tax Credits in 1993. The initial Tax Credit Compliance Period expired on December 31, 2009. An extended use restriction agreement is in place on the property until December 31, 2024. In addition to the Housing Tax Credit restriction agreement, in 1992 the property was acquired by the Resolution Trust Corporation ("RTC") and as a result has an additional restriction agreement in place until December 2034.

Organizational Structure and Previous Participation: The Borrower is Dalcor Williamsburg, Limited Partnership. The General Partner is Dalcor Williamsburg GP, LLC, which is wholly owned by Dalcor Affordable I, LLC; of which Dalcor Holdings, LLC is the sole member. M. Dale Dodson and JKL Realty, Ltd. are both 50% owner of the previous mentioned company. JKL Realty, Ltd. includes the following entity and individuals JKL Group, LLC, Ronald D. Murff, Kathi Yeager and Judy Burleson. The applicant was considered a Category 3 portfolio and the compliance history was reviewed by EARAC and approved with no conditions.

Public Hearing/Public Comment: A public hearing for the proposed development was conducted by staff on October 22, 2015 and there was no one in attendance at the hearing. A copy of the hearing transcript is included herein. The Department has received a letter of support from Grand Prairie Mayor Ron Jensen. No letters of opposition have been received for this development.

Summary of Financial Structure

This transaction involves a Fannie Mae Multifamily Pass-Through Mortgage-Backed Security ("MBS"). The mortgage loan will be originated by the Department to the Borrower on the closing date and funded with bond proceeds. Simultaneously with the closing, the loan will be assigned to the Fannie Mae lender (Red Mortgage Capital) and the funds used by the lender by which to acquire the loan will be deposited into the collateral account to secure the bonds. In this respect, the transaction mirrors prior FHA 221(d)(4) multifamily transactions where the project will be 100% cash collateralized at all times, thus offering protection for the bondholders. Approximately 10-15 days from the closing date Red Mortgage Capital will assign the loan to Fannie Mae and in exchange Fannie will deliver the MBS to the trustee. The trustee will use the funds (loan proceeds from Red) in the collateral account to purchase the MBS which will be used to secure the bonds from this point forward. Payments on the bonds will be guaranteed by Fannie Mae.

Under the proposed structure, the Department will issue tax-exempt fixed rate bonds in an amount not to exceed $24,000,000. The bonds will have an interest rate that mirrors the pass-through rate on the MBS, currently estimated to be 3.55%, with a term of 16 years and amortization of 35 years. The bonds will have a maturity date of January 1, 2032, and are estimated to have a Aaa rating by Moody's.

RESOLUTION NO. 16-004

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (PASS-THROUGH – WILLIAMSBURG APARTMENTS), SERIES 2015; 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, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely 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, very low and extremely 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 multifamily residential rental development 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 its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Williamsburg Apartments), Series 2015 (the "Bonds") pursuant to and in accordance with the terms of an Indenture of Trust (the "Indenture") between the Department and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Dalcor Williamsburg, Ltd., a Texas limited partnership (the "Borrower") in order to finance the cost of acquisition, equipping and rehabilitation of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and 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 September 3, 2015, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas;

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Financing Agreement (the "Financing Agreement") pursuant to which (i) the Department will agree to make a mortgage loan (the "Loan") to the Borrower to enable the Borrower to finance the cost of acquisition,

equipping and rehabilitation of the Development 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 sufficient to pay the interest on the Bonds in accordance with the terms of a Multifamily Loan and Security Agreement (Non-Recourse) (the "Loan Agreement") by and between the Borrower and the Department and to pay other costs described in the Financing Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") from the Borrower for the benefit of the Department; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Financing Agreement (other than for the repayment of principal and interest) will be secured by a Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Subordinate Mortgage") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Borrower will obtain a loan from Red Mortgage Capital, LLC (the "Lender"), and the Lender will deposit a portion of the proceeds of such loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; 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 Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Lender has agreed to permit the Loan and to allow the lien of the Subordinate Mortgage in accordance with the terms of a Subordination Agreement (the "Subordination Agreement") among the Lender, the Issuer and the Borrower; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an Official Statement (the "Official Statement") and to authorize the authorized representatives of the Department to deem the Official Statement "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final Official Statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Purchase Contract (the "Bond Purchase Agreement") with RBC Capital Markets, LLC (the "Underwriter"), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Financing Agreement, the Regulatory Agreement, the Loan Agreement, the Subordination Agreement, the Official Statement and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Mortgage, the Subordinate Mortgage and the Note; 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 Article I, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Mortgage, the Subordinate Mortgage and the Note 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 1

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 pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all 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 are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by the Chair or Vice Chair of the Board or the Executive Director of the Department of the Indenture and the Bond Purchase Agreement; provided that the interest rate on the Bonds shall not exceed 5%; (ii) the aggregate principal amount of the Bonds shall not exceed $24,000,000; (iii) the final maturity of the Bonds shall occur not later than December 1, 2033; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 103% of the principal amount thereof.

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 each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Financing Agreement and the Loan Agreement. That the form and substance of the Financing Agreement and the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Financing Agreement and the Loan Agreement, and to deliver the Financing Agreement and the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.6 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.7 Acceptance of the Note, the Mortgage and the Subordinate Mortgage. That the form and substance of the Note, the Mortgage and the Subordinate Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.8 Approval, Execution and Delivery of the Subordination Agreement. That the form and substance of the Subordination Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Subordination Agreement, and to deliver the Subordination Agreement to the Lender and the Borrower and to cause the Subordination Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.9 Approval, Execution, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Chair and Vice Chair of the Board and the Executive Director of the Department are hereby severally authorized to deem the Official Statement "final" for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department's counsel.

Section 1.10 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized 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 1.11 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell & Giuliani LLP, 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.

Section 1.12 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	-	Financing Agreement
Exhibit D	-	Regulatory Agreement
Exhibit E	-	Bond Purchase Agreement
Exhibit F	-	Note
Exhibit G	-	Loan Agreement
Exhibit H	-	Mortgage
Exhibit I	-	Subordinate Mortgage
Exhibit J		Subordination Agreement
Exhibit K	-	Official Statement

Section 1.13 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:

the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Asset Analysis and Management of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

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. That the Board hereby authorizes, and approves the submission by the Department's Bond Counsel to the Attorney General, 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 or Assistant Secretary to the Board hereby is 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 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from Moody's Investors Service, is approved, ratified and confirmed hereby.

Section 2.5 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 Development in accordance with the Indenture and to enter into any agreements relating thereto only to the extent permitted by the Indenture.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be RBC Capital Markets, LLC, or any other party identified in the Bond Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

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 Development and the information with respect to the proposed financing of the Development 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 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,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development 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 Development in accordance with the requirements of the Financing Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the 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 Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Financing Agreement and the Regulatory Agreement, which require, among other things, that the Development 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 Development 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 to obtain decent, safe, and sanitary housing by financing the costs of the Development, 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 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 Development 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 Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan will produce the amounts required, when combined with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development 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.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special 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 or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State 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 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. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

[Execution page follows]

PASSED AND APPROVED this 12th day of November, 2015.

[SEAL]

____
J. Paul Oxer, Chair

ATTEST:

____
James B. Eccles, Secretary

EXHIBIT A

Description of Development

Borrower: Dalcor Williamsburg, Ltd., a Texas limited partnership

Development: The Development is a 418-unit affordable multifamily community known as Williamsburg Apartments, at 2421 South Carrier Parkway, Grand Prairie, Texas 75051. It consists of thirty-one (31) residential apartment buildings with approximately 335,094 net rentable square feet. The unit mix will consist of:

227	one-bedroom/one-bath units
5	two-bedroom/one-bath units
94	two-bedroom/one and one-half bath
92	two-bedroom/two bath
418	Total Units

Unit sizes will range from approximately 448 square feet to approximately 960 square feet.

August 18, 2015

Texas Department of Housing and Community Affairs (TDHCA)
Multifamily Finance Division
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3491

Re: 4% Tax Credit Application #mf15607

Dear Sirs:

The Dalcor Companies have proposed the acquisition and rehabilitation of the Williamsburg Apts. for affordable rental housing. The property consists of 418 units at 2421 S. Carrier Parkway Grand Prairie Texas. Their application has been submitted to the Texas Department of Housing and Community Affairs for 2015 Housing Tax Credits for the Williamsburg Apartments.

In accordance with the Texas Government Code we the City of Grand Prairie the Governing body have had sufficient time to review the project, and ask questions of the applicant. After due consideration of the information provided this governing body does not object to the applicants proposal.

On behalf of the City of Grand Prairie, I Mayor Ron Jensen issue and endorse this letter of support for TDHCA project number mf15607 for 4% tax credits to acquire and rehabilitate the Williamsburg Apartments as prepared and submitted by the Dalcor Companies.

Sincerely,

Ron Jensen
Mayor

Office of the Mayor • P.O. Box 534045 • Grand Prairie • Texas • 75053-4045 • Office: 972-237-8012 • Fax: 972-237-8088

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING
ON
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS
RELATING TO
WILLIAMSBURG APARTMENTS

Milam Elementary School
2030 Proctor Drive
Grand Prairie, Texas

Thursday,
October 22, 2015
6:30 p.m.

BEFORE: SHANNON ROTH, TDHCA Housing Specialist

1 P R O C E E D I N G S

2 Good evening. My name is Shannon Roth. I
3 would like to proceed with the public hearing. Let the
4 record show that it is 6:51 p.m., on Thursday, October 22.
5 We are at the Milam Elementary School, located at 2030
6 Proctor Drive, Grand Prairie, Texas.
7 I'm here to conduct the public hearing on
8 behalf of the Texas Department of Housing and Community
9 Affairs with respect to an issue of tax-exempt multifamily
10 revenue bonds for a residential rental community.
11 This hearing is required by the Internal
12 Revenue Code. The sole purpose of the hearing is to
13 provide a reasonable opportunity for interested
14 individuals to express their views regarding the
15 development and the proposed bond issue.
16 No decisions regarding the development will be
17 made at this hearing. The Department's board is scheduled
18 to meet to consider the transaction on November 12, 2015.
19 In addition to providing your comments at this hearing,
20 the public is also invited to provide comment directly to
21 the board at any of their meetings. The Department staff
22 will also accept written comments from the public up to
23 five o'clock p.m. on November 3, 2015.
24 The bonds for the Williamsburg Apartments will
25 be issued as tax-exempt multifamily revenue bonds in an

1 aggregate principal amount not to exceed $24,000,000 and
2 taxable bonds, if necessary, in an amount to be determined
3 and issued in one or more series by the Texas Department
4 of Housing and Community Affairs, the Issuer.
5 The proceeds of the bonds will be loaned to the
6 Dalcor Williamsburg, Ltd., or a related person or
7 affiliate entity thereof, to finance a the acquisition and
8 rehabilitation of a multifamily housing development
9 described as follows: a 418-unit multifamily residential
10 rental development to be constructed on approximately
11 18.434 acres of land located at 2421 South Carrier
12 Parkway, Grand Prairie, Texas. The proposed multifamily
13 rental housing community will be initially owned and
14 operated by the borrower or a related person or affiliate
15 thereof.
16 I would like to open the floor for public
17 comment.
18 (No response.)
19 MS. ROTH: Let the record show that there are
20 no attendees; therefore, this meeting is adjourned at
21 6:53 p.m.
22 (Whereupon, at 6:53 p.m., the public hearing
23 was concluded.)

1 C E R T I F I C A T E
2
3 IN RE: Williamsburg Apartments
4 LOCATION: Grand Prairie, Texas
5 DATE: October 22, 2015
6 I do hereby certify that the foregoing pages,
7 numbers 1 through 4, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Barbara Wall before the
10 Texas Department of Housing and Community Affairs.
11
12
13
14
15
16 10/27/2015
17 (Transcriber) (Date)
18
19 On the Record Reporting
20 3636 Executive Ctr Dr., G-22
21 Austin, Texas 78731
22
23

C E R T I F I C A T E

IN RE: Williamsburg Apartments

LOCATION: Grand Prairie, Texas

DATE: October 22, 2015

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Barbara Wall before the Texas Department of Housing and Community Affairs.

Laurel H. Stoddard 10/27/2015
(Transcriber) (Date)

On the Record Reporting
3636 Executive Ctr Dr., G-22
Austin, Texas 78731

1h

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-005 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2015 Waiting List for Gateway at Hutchins, Mercantile Apartments, Peoples El Shaddai Village, Brooks Manor Apartments, Independent Missionary Village, Garden City Apartments, and St. James Manor Apartments.

RECOMMENDED ACTION

WHEREAS, bond pre-applications for Gateway at Hutchins, Mercantile Apartments, Peoples El Shaddai Village, Brooks Manor Apartments, Independent Missionary Village, Garden City Apartments, and St. James Manor Apartments, were submitted to the Department for consideration of an inducement resolution;

WHEREAS, the Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

WHEREAS, the inducement allows staff to submit an application to the Bond Review Board ("BRB") to await a Certificate of Reservation;

NOW, therefore, it is hereby

RESOLVED, the Inducement Resolution No. 16-005 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2015 Private Activity Bond Program for Gateway at Hutchins (#15607), Mercantile Apartments (#15610), Peoples El Shaddai Village (#15611), Brooks Manor Apartments (#15612), Independent Missionary Village (#15613), Garden City Apartments (#15614) and St. James Manor (#15615) is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the state's annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows an Applicant the opportunity to move into the full application phase of the process. Once an application receives a Certificate of Reservation, an Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds

that may be issued within the state. Inducement Resolution No. 16-005 would reserve approximately $99,725,000 in state volume cap.

Gateway at Hutchins (#15608)
The proposed development is located at 805 N. Denton Street in Hutchins, Dallas County, and includes the construction of 336 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income ("AMFI"). The Department received a letter of support from Dallas County Judge Clay Lewis Jenkins. No letters of opposition have been received for this development. The pre-application has a final score of 62 points.

Mercantile Apartments (#15610)
The proposed development is located at Northern Cross Blvd. and Endicott Ave. in Fort Worth, Tarrant County, and includes the construction of 324 units serving the general population. This transaction is proposed to be Priority 3, with 4 units rent and income restricted at 50% of the AMFI and the remaining 320 units will be rent and income restricted at 60% AMFI. The Department has not received any letters of support and received a letter of opposition from the Eagle Mountain Saginaw Independent School District. The pre-application has a final score of 54 points.

Peoples El Shaddai Village (#15611)
The existing development is located at 2836 E. Overton Road in Dallas, Dallas County, and includes the acquisition and rehabilitation of 100 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the AMFI. The Department has not received any letters of support or opposition for this development. The pre-application has a final score of 59 points.

Brooks Manor Apartments (#15612)
The existing development is located at 444 Jefferson St. in West Columbia, Brazoria County, and includes the acquisition and rehabilitation of 50 units serving the elderly population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the AMFI. The Department has not received any letters of support or opposition for this development. The pre-application has a final score of 52 points.

Independent Missionary Village (#15613)
The existing development is located at 6607 Prino Rd. in Hitchcock, Galveston County, and includes the acquisition and rehabilitation of 72 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the AMFI. The Department has not received any letters of support or opposition for this development. The pre-application has a final score of 52 points.

Garden City Apartments (#15614)
The existing development is located at 9601 W. Montgomery Rd. in Houston, Harris County, and includes the acquisition and rehabilitation of 252 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the AMFI. The Department has not received any letters of support or opposition for this development. The pre-application had a final score of 67 points.

St. James Manor (#15615)

The existing development is located at 3119 Easter Ave. in Dallas, Dallas County, and includes the acquisition and rehabilitation of 100 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the AMFI. The Department has not received any letters of support or opposition for this development. The pre-application had a final score of 59 points.

RESOLUTION NO. 16-005

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

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 persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); 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 persons and families of low, very low and extremely 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 multifamily residential rental development 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, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the "Developments") more fully described in <u>Exhibit A</u> attached hereto. The ownership of the Developments as more fully described in <u>Exhibit A</u> will consist of the applicable ownership entity and its principals or a related person (the "Owners") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Developments listed on <u>Exhibit A</u> attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto ("Costs of the Developments") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in

connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature.

Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell & Giuliani LLP or other nationally recognized bond counsel acceptable to the Department ("Bond Counsel"), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments' necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are 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 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Asset Analysis and Management of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

(a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;

(b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;

(c) the Owners are financially responsible;

(d) the financing of the Developments is a public purpose and will provide a public benefit; and

(e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 12th day of November, 2015.

[SEAL]

By:____
Chair, Governing Board

ATTEST:

____
Secretary to the Governing Board

EXHIBIT “A”

Description of the Owner and the Development

<table>
<tr><th>Project Name</th><th>Owner</th><th>Principals</th><th>Amount Not to Exceed</th></tr>
<tr><td>Gateway at Hutchins</td><td>Hutchins 805 North Denton, LLC, a Texas limited liability company</td><td>Managing Member: Hutchins 805 North Denton GP, LLC, a Texas limited liability company</td><td>$29,000,000</td></tr>
<tr><td colspan="4">Costs: Construction of a 336-unit affordable, multifamily housing development to be known as Gateway at Hutchins, to be located at 850 N. Denton Street, Hutchins, Dallas County, Texas 75141.</td></tr>
<tr><th>Project Name</th><th>Owner</th><th>Principals</th><th>Amount Not to Exceed</th></tr>
<tr><td>Mercantile Apartments</td><td>Mercantile Apartments Ltd., a Texas limited partnership</td><td>General Partner: Mercantile Apartments GP LLC, a Texas limited liability company</td><td>$30,225,000</td></tr>
<tr><td colspan="4">Costs: Construction of a 324-unit affordable, multifamily housing development to be known as Mercantile Apartments, to be located at the Northwest quadrant of Northern Cross Blvd. and Endicott Avenue, Fort Worth, Tarrant County, Texas 76137.</td></tr>
<tr><th>Project Name</th><th>Owner</th><th>Principals</th><th>Amount Not to Exceed</th></tr>
<tr><td>Independent Missionary Village</td><td>Steele Texas LIHTC LLC, a Colorado limited liability company</td><td>Managing Member: Steele Texas LIHTC MM LLC, a Colorado limited liability company</td><td>$5,600,000</td></tr>
<tr><td colspan="4">Costs: Acquisition/rehabilitation of a 72-unit affordable, multifamily housing development known as Independent Missionary Village, located at 6607 Prino Road, Hitchcock, Galveston County, Texas 77563.</td></tr>
<tr><th>Project Name</th><th>Owner</th><th>Principals</th><th>Amount Not to Exceed</th></tr>
<tr><td>Peoples El Shaddai Village</td><td>Steele Texas LIHTC LLC, a Colorado limited liability company</td><td>Managing Member: Steele Texas LIHTC MM LLC, a Colorado limited liability company</td><td>$7,500,000</td></tr>
<tr><td colspan="4">Costs: Acquisition/rehabilitation of a 100-unit affordable, multifamily housing development known as Peoples El Shaddai Village, located at 2836 E. Overton Road, Dallas, Dallas County, Texas 75216.</td></tr>
</table>

Project Name	Owner	Principals	Amount Not to Exceed
St. James Manor Apartments	Steele Texas LIHTC LLC, a Colorado limited liability company	Managing Member: Steele Texas LIHTC MM LLC, a Colorado limited liability company	$7,200,000
Costs: Acquisition/rehabilitation of a 100-unit affordable, multifamily housing development known as St. James Manor Apartments, located at 3119 Easter Avenue, Dallas, Dallas County, Texas 75216.			
Project Name	**Owner**	**Principals**	**Amount Not to Exceed**
Garden City Apartments	Steele Texas LIHTC LLC, a Colorado limited liability company	Managing Member: Steele Texas LIHTC MM LLC, a Colorado limited liability company	$17,000,000
Costs: Acquisition/rehabilitation of a 252-unit affordable, multifamily housing development known as Garden City Apartments, located at 9601 W. Montgomery Road, Houston, Harris County, Texas 77088.			
Project Name	**Owner**	**Principals**	**Amount Not to Exceed**
Brooks Manor Apartments	Steele Texas LIHTC LLC, a Colorado limited liability company	Managing Member: Steele Texas LIHTC MM LLC, a Colorado limited liability company	$3,200,000
Costs: Acquisition/rehabilitation of a 50-unit affordable, multifamily housing development known as Brooks Manor Apartments, located at 444 Jefferson Street, West Columbia, Brazoria County, Texas 77486.			

DALLAS COUNTY JUDGE CLAY LEWIS JENKINS

Mr. Tim Irvine
Executive Director
Texas Department of Housing & Community Affairs
221 East 11th Street, Insurance Building Annex
PO Box 13941
Austin, TX 78711-3941

October 23, 2015

Dear Mr. Irvine,

I received the Public Notification for The Gateway at Hutchins Project, TDHCA Number 15608, located in Hutchins, Dallas County, Texas, which I represent.

I am pleased to lend my support to this project, which will serve the constituents in Dallas County and promote needed development in the Southern Sector.

Sincerely,

Clay Jenkins

Clay Jenkins
Dallas County Judge
411 Elm Street, Second Floor
Dallas, TX 75202
214-653-7949

EAGLE MOUNTAIN
SAGINAW ISD
Fostering a Culture of Excellence

October 28, 2015

Multifamily Finance Division
P.O. Box 13941
Austin, TX 78711-3491

Ref: Development Number 15610

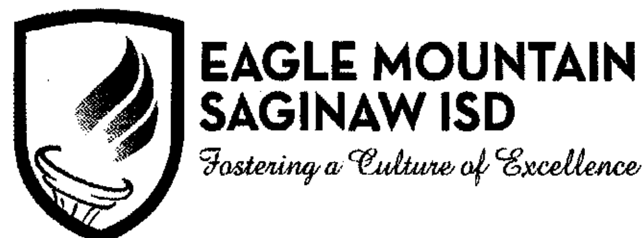
Governing Board:

Eagle Mountain-Saginaw Independent School District is aware of a proposed multifamily development, The Mercantile, located in the industrial/commerce district Mercantile Center, near I-35 and Loop 820.

To our knowledge, there are no medical, grocery, retail, educational, pharmaceutical, or community resources (such as parks) in the immediate area. This area is an industrial park and is no way suitable as a residential zone. The absence of these resources does not meet the vision of the Blue Zone Project that the City of Fort Worth has adopted. The Blue Zone Project works with community leaders to inspire positive sustainable changes to policy and built-environment. Community policy has a big impact on healthy choices. Sidewalks, bike lanes, community gardens, mobile food markets, farmers' markets, and other community infrastructures affect our ability to move naturally, connect socially, and access healthy food. When permanent changes are made to our surroundings, we can change behaviors and help our whole community lead healthier, happier, and longer lives. Placing families without the economic means to have adequate resources creates an economic island with no connectivity to services, which is especially difficult for those individuals who are low income.

The Eagle Mountain-Saginaw ISD is one of the fastest growing school districts in the state. In order to address this growth the district is very careful about managing growth patterns so that it can provide adequate resources for our students. Our growth projections are based on the current zoning stipulations for our school district. Adding this proposed multifamily development would cause the City to rezone this property from Industrial. EMS would to have to redraw our attendance boundaries, which would cause the District to have to build a new elementary at a cost of approximately 27 million dollars at taxpayer expense. In addition, the taxpayer will lose the taxable value of property associated with individual development.

1200 Old Decatur Road Fort Worth, Texas 76179 (817)232-0880 Fax (817)847-6124 www.emsisd.com



District representatives met with Jay Johnson and Debra Guerrero of the NRP Group on August 27, 2015 to discuss The Mercantile. They explained their project and our concerns were expressed. It was stated, "If the District doesn't want us, we don't want to be here." Our district leadership team also met to discuss this proposed development. Due to the economic hardship and the lack of community resources that would be placed on our taxpayers in the immediate area of the proposed development, it was the consensus of the group that this proposal cannot be supported by the school district. We implore you to not approve the funding for this ill-conceived project. There are better locations within our school district to support the needs of these families, who deserve a better quality of life than living in an industrial zone.

Sincerely,

Jim F. Chadwell, Ed.D.
Superintendent

Clete Welch
Chief Operations Officer

1i

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on Waivers Relating to Mandatory Development Amenities and Determination Notices for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Woodland Christian Towers was submitted to the Department on June 22, 2015;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued on January 16, 2015, and will expire on December 31, 2017;

WHEREAS, the proposed issuer of the bonds is the Houston Housing Financing Corporation;

WHEREAS, the applicant requested two waivers relating to §10.101(b)(4) Mandatory Development Amenities regarding Energy Star ceiling fans and central HVAC;

WHEREAS, pursuant to §10.207(a) of the Uniform Multifamily Rules staff recommends based on the information provided by the applicant the waivers be granted;

WHEREAS, the Executive Award and Review Advisory Committee ("EARAC") recommends the issuance of the Determination Notice with the condition that closing occur within 120 days (on or before March 12, 2016); and

WHEREAS, additional conditions were placed on the award by EARAC that were subsequently resolved with the exception of one relating to clarification with the City of Houston regarding the elderly preference limitation;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $560,932 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Woodland Christian Towers is hereby approved as presented to this meeting

FURTHER RESOLVED, staff will engage in discussions with the City of Houston regarding the elderly preference limitation prior to the Board meeting and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before March 12, 2016, the Board authorizes EARAC to extend the Determination Notice date subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: Woodland Christian Towers involves the rehabilitation and acquisition of an existing development, originally constructed in 1971, located at 600 East Tidwell Road in Houston, Harris County; an area that does not have a zoning ordinance. The development has 127 units, all of which will be rent and income restricted at 60% of Area Median Family Income ("AMFI"). The development currently serves seniors and anticipates also serving persons with disabilities. Based on recent HUD guidance published on July 21, 2015, clarifying how it treats certain age-restricted developments, the Department will monitor this development based on it having an elderly preference. According to HUD, a property receiving certain HUD funding, in this case a long-term Section 8 HAP contract covering all of the units, is subject to an elderly preference which means the development must lease to other populations, including in many cases elderly households with children, and must be developed and operated in a manner that would enable it to reasonably foresee a demand for such households. The census tract (2205.00) has a median household income of $19,188, is in the fourth quartile and has a poverty rate of 29%.

Waiver Request: The applicant has requested a waiver of two mandatory development amenities under §10.101(b)(4) of the Uniform Multifamily Rules, specifically, the requirement that all units must have central heating and air-conditioning and that there be at least one Energy-Star rated ceiling fan in each Unit.

The development is seven stories and includes studio and one-bedroom units, ranging in size from 350-675 square feet, with no single room being larger than 200 square feet. The studio units currently have one Packaged Terminal Air Conditioner ("PTAC") unit and the one-bedroom units have two PTAC units. Under §10.101(b)(4), PTAC units meet the requirement for central heating and air-conditioning for single-room occupancy and efficiency units only. Unique to this development, is that the PTAC units are self contained and have no existing ductwork; therefore, in order to install a central HVAC system in each unit, new ductwork and fur-downs, condensers and air handling units would have to be installed. Additional power requirements would be needed beyond those currently being used, requiring a new electrical panel. In discussions with the General Contractor and Architect, the applicant vetted the associated costs and determined that the associated costs to comply with this requirement would render the development infeasible. Given the structural limitations of the building, each condenser unit would have to be installed on newly constructed platforms that would have to be constructed to the exterior of the building or installed on the roof or ground. The economic and practical approach is to upgrade the current PTAC system, which is included in the scope of work, rather than build a new central air system for only the one-bedroom units, which would create excess costs that would have ultimately no net effect.

As it relates to the requirement to install Energy-Star rated ceiling fans, the applicant indicated that opening up the concrete walls to install the necessary wiring and ceiling fans would be cost prohibitive. The current scope of work involves the replacement of all the PTAC units, which have a fan feature to provide air flow in all of the units. According to the applicant, the existing PTAC units have historically been sufficient in meeting the needs of the residents and will be improved with the installation of new PTAC units as well as new and better insulated windows.

In accordance with Texas Government Code §2306.001 whereby the Department is to provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income as well as the preservation of government assisted housing, staff believes the proposed

development meets such stated purpose. Moreover, in consideration of the structural challenges associated with the aforementioned required amenities, and the efficiency at which the current PTAC systems operate, staff recommends granting the waivers.

Conditions to Award: The application and underwriting report were reviewed by EARAC and there was discussion relating to the accessibility standards considering the different funding sources involved, the layering of different funds on the units and whether the City of Houston had an understanding of the elderly preference guidance from HUD, that warranted additional diligence from staff. These issues were resolved subsequent to the EARAC meeting with the exception of the last one relating to the elderly preference. As of Board posting such discussion has not taken place, but will before the Board meeting. Moreover, it was recommended by EARAC that any Board approval of the Determination Notice include a condition related to the closing of the bonds. Specifically, EARAC recommends that the closing must occur on or before 120 days (March 12, 2016) and that if closing has not occurred by such date, the Board authorizes EARAC to extend the Determination Notice date subject to an updated previous participation review, if necessary. This condition is generally consistent with the requirements of a bond transaction utilizing non-traditional carryforward (the subject applicant received a traditional carryforward reservation). For non-traditional carryforward reservations, a statutory 150-day deadline from the date of the reservation for closing is imposed and the Determination Notice for any associated 4% award expires if closing does not occur within this timeframe or if the financing structure or terms change. Traditional carryforward reservations are not specifically addressed in the rule and this recommendation addresses the proposal in a manner to result in consistency. Staff believes that closing within a reasonable period after Board action is important and consistent with the constraints present for most other bond transactions.

Organizational Structure: The Borrower is Woodland Towers, L.P. The General Partner is WCT Housing, LLC, of which the sole member is Woodland Christian Towers, Inc., a nonprofit organization which includes the following board members and officers: Don Stump, Mark Anderson, Kathleen Mertz, John Rodenberg, Shannon Williams, Ed Gomez, Cletis Young, Jacqueline Williams and Lavonna DeJesus. In accordance with 10 TAC §1.301(d)(1), Woodland Christian Towers has been designated as a Category 1 application, with no Previous TDHCA Participation and was deemed acceptable by EARAC without further review or discussion.

Public Comment: The Department has not received any letters of support or opposition for this development.

1j

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding the utilization of the Department's Mortgage Warehouse Facility in conjunction with the Department's Taxable Mortgage Program ("TMP-79") and possible corresponding modification of the Master Trade Confirmation and other program documents.

RECOMMENDED ACTION

WHEREAS, the Department has entered into a Warehousing Agreement that provides a Warehouse Facility with First Southwest Company that is used in conjunction with mortgage-backed securities ("MBS") originated through the Department's single family mortgage revenue bond programs;

WHEREAS, in addition to originating and securitizing loans into MBS to be sold to third parties in the to-be-announced ("TBA") market, the Department utilizes TMP-79 as a loan origination mechanism for mortgage revenue bond issues;

WHEREAS, mortgage loans originated through TMP-79 are automatically hedged by First Southwest Company, who has been procured as the Department's TBA Provider, at a fixed cost; when hedged for a bond issue, there may also be a cost to pair-off or terminate the hedges versus delivering the MBS to the TBA market;

WHEREAS, the Department can achieve economic benefit by originating certain mortgage loans that will be pooled into MBS without the initial hedge or pair-off cost exposure and by allowing certain hedges to expire without incurring the cost of a hedge extension;

NOW, therefore, it is hereby

RESOLVED, that mortgage loans originated through TMP-79 and the resulting MBS may, with approval of the Director of Bond Finance, 1) be originated without a TBA hedge and, 2) certain initial hedges may be allowed to expire without incurring the expense of a hedge extension if, in both cases, the MBS to be backed by the mortgage loans is or will be warehoused within the Warehouse Facility and if purchasing such hedges or hedge extensions is cost prohibitive.

BACKGROUND

The Department has augmented its traditional bond mortgage revenue bond issuance approach with a TBA market conventional banking model and, more recently, has implemented a hybrid structure that uses TMP-79 as the origination mechanism for single family mortgage revenue bond issues. As

that structure evolves further, staff continues to evaluate ways to safely reduce costs and achieve economic efficiencies. While TMP-79 eliminates the negative arbitrage that would be associated with a traditional bond structure, there are certain expenses associated with this mechanism that staff believes it can reduce or eliminate, including the cost of hedging for certain loan products (depending on market conditions) and the cost of hedge extensions associated with loans and MBS that will back a bond issue.

One particular loan product, the DPA Plus option that offers up to $8,000 of assistance, is an excellent example of how increased economic efficiencies can be achieved safely and for the benefit of the Department and low and moderate income homebuyers alike. The average loan size for the DPA Plus program is under $100,000, which produces over eight points of down payment assistance, on average, to these first-time homebuyers. Under current TBA pricing, a hedge on the tax-exempt bond eligible DPA Plus loans locks in a net loss position. In addition to the hedge cost there is also a possible "pair-off" cost to terminate the hedges and deliver the loans outside the TBA market.

In this circumstance, hedging to a loss position makes no sense. Further, these loans will be delivered to a tax-exempt bond issue and, given the eight points of assistance, have a rate high enough to provide a natural hedge. Rather than incur expenses that make these loans uneconomic, staff is seeking the ability to, in the day-to-day management of the mortgage loan pipeline, determine best execution and either 1) hedge through TBA, depending on market conditions and pricing levels at the time, or 2) originate and securitize into MBS and deliver the MBS into the Warehouse Facility. The latitude to adjust strategies with market conditions will permit the Department to continue to offer these loan options in the most economically efficient manner.

The vast majority of TMP-79 loans and MBS will be hedged at all times, with a few exceptions such as the DPA Plus loans and loans or MBS for which it is uneconomical to extend the hedge. These unhedged loans will be held in the Warehouse Facility until used to back a bond issue; this period is expected to be for a maximum of 60 to 90 days.

1k

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding Resolution No. 16-007 authorizing application to the Texas Bond Review Board for reservation of the 2015 single family private activity bond authority carryforward from the Unencumbered State Ceiling.

RECOMMENDED ACTION

See attached Resolution.

BACKGROUND

Each year, state agencies with authority to issue tax exempt bonds may apply to the Texas Bond Review Board ("BRB") for private activity bond carryforward from the Unencumbered State Ceiling. The Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") has requested and received $300 million in private activity bond carryforward allocation from the Unencumbered State Ceiling in calendar years 2010, 2011, 2013, and 2014. Bond Finance is again requesting authorization to draw down an amount not to exceed $300 million of additional unreserved 2015 volume cap from the Unencumbered State Ceiling if it is available at year end. Currently, there is no additional unreserved volume cap, however, Bond Finance would like to submit an application in the event any becomes available. All volume cap will be used for future issuance of single family mortgage revenue bonds (new origination and refunding) and for future Mortgage Credit Certificate programs. Any requested volume cap must be used within three years.

At the beginning of each new single family bond issuance, the Governing Board of the Department petitions the BRB to start the process in the form of a resolution followed by an application to draw down the Department's private activity bond authority, also known as "volume cap." Staff at this time is not seeking, nor is the Board giving, final approval of any program using this volume cap.

The chart below outlines the Department's available single family volume cap for the calendar year 2015. All 2014 carryforward must be used by December 31, 2017, and 2015 requested volume cap must be used by December 31, 2018.

Sources as of October 2015		
2014 Carryforward		290,074,300
2015 Private Activity Bond Allocation		251,648,594
2015 Single Family Volume Cap Collapse (Aug 2015)		500,000,000
Department Allocation	$	1,041,722,894
2015 Unencumbered State Ceiling - Proposed Carryforward Request		300,000,000
Total Allocation if Additional Request Received	$	1,341,722,894
Projected Uses		
2015 Series CD Single Family		25,000,000
2016 Series A Single Family		40,000,000
2016 Series B Single Family		40,000,000
2016 Series C Single Family		40,000,000
2016 MCC (Expected to close late 2016)		500,000,000
Total Uses	$	645,000,000

RESOLUTION NO. 16-007

RESOLUTION AUTHORIZING REQUEST FOR UNENCUMBERED STATE CEILING; 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 from time to time (the "Act"), for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, Section 146(a) of the Internal Revenue Code of 1986, as amended (the "Code") requires that certain "private activity bonds" (as defined in Section 141(a) of the Code) must come within the issuing authority's private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

WHEREAS, the private activity bond "State ceiling" (as defined in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended (the "Allocation Act"); and

WHEREAS, the Allocation Act provides that on the last business day of the year the Texas Bond Review Board (the "Bond Review Board") may assign as carryforward to state agencies at their request any State ceiling that is not reserved or designated as carryforward and for which no application for carryforward is pending (referred to herein as "Unencumbered State Ceiling"); and

WHEREAS, the Governing Body desires to request that Unencumbered State Ceiling for the year 2015 be assigned to the Department as carryforward;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Assignment of Unencumbered State Ceiling. The Department is authorized to submit a request to the Bond Review Board for assignment as carryforward to the Department of all remaining Unencumbered State Ceiling for the year 2015 in an aggregate amount not to exceed $300,000,000.

Section 1.2 Authorization of Certain Actions. The Authorized Representatives of the Department named in this Resolution are hereby authorized to take such actions on behalf of the Department as may be necessary to carry out the purposes of this Resolution.

Section 1.3 Authorized Representatives. The following persons are 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 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized

Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1 Purposes of Resolution. The Governing Board has expressly determined and hereby confirms that the Department's receipt of Unencumbered State Ceiling will accomplish a valid public purpose of the Department by providing for the housing needs of persons and families of low, very low and extremely low income and families of moderate income in the State.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 3.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 12th day of November, 2015.

____
Chair, Governing Board

ATTEST:

____
Secretary to the Governing Board

(SEAL)

11

BOARD ACTION REQUEST

HOME PROGRAM DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on an amendment to HOME Homeowner Rehabilitation Assistance Household Commitment Contract issued under Reservation Agreement 2011-0092 for the reconstruction of a single family home by Runnels County.

RECOMMENDED ACTION

WHEREAS, the Department executed a Reservation System Participant ("RSP") Agreement with Runnels County ("County") on October 31, 2012;

WHEREAS, a Household Commitment Contract ("HCC") with the County was executed on October 6, 2014, for reconstruction of a home located at 705 N 11th Street, Ballinger, Texas (Activity Number 39849) and such reconstruction has commenced;

WHEREAS, the HCC end date was previously extended by three months to end on October 15, 2015, as authorized by the HOME Director and as permitted by the HOME Rules;

WHEREAS, the County has experienced delays in completing construction activities for this activity, and has requested an additional three-month extension to complete construction; and

WHEREAS, the Board is authorized to grant such extension;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the amendment to extend the end date of the HOME Household Commitment Contract for activity number 39849 by three months to January 5, 2016.

BACKGROUND

On October 31, 2012, the Department executed a 24-month Reservation System Participant Agreement ("RSP Agreement") with the County for the reconstruction of single family residential units targeting low-income homeowners in Runnels County. The RSP Agreement allows the County access to funds made available in the HOME Reservation System for Homeowner Rehabiliation Assistance for households within their jursidiction.

Under the RSP Agreement, the County successfully reserved funding for one household located in Ballinger, Texas. The original term of the Household Commitment Contract ("HCC") was from October 6, 2014 to July 5, 2015. Documentation submitted by the County indicates that the County experienced extenuating circumstances that prevented timely completion of construction, including inclement weather during January and February 2015, and then again from April to May 2015. These events resulted in an extension through October 5, 2015, being granted by the Department.

On several occasions in July, August, and September, the County's representative requested updates (from the contractor performing the work) on the status of the completion of the home in an attempt to ensure that it would be complete by the October 5, 2015, deadline. The contractor repeatedly assured the County through their representative that construction would be complete and provided progress updates. Despite these assurances, the contractor notified the County on October, 2, 2015, that construction activities would not be completed on time, at which time the County notified the Department.

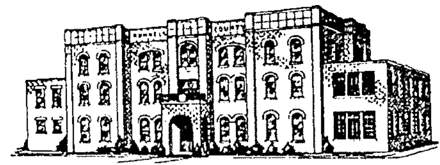
The County submitted another extension request to the Department on October 5, 2015. Staff denied the extension request in accordance with 10 Texas Administrative Code ("TAC") §23.27(f), which states that the Department is only authorized to approve one three (3) month time extension to a HCC to allow for the construction completion. The Department had already approved an extension in July, 2015, extending the HCC to October 5, 2015.

In accordance with the Department's Administrative Rules at 10 TAC §1.7(b)(2), the County timely appealed the denial decision to TDHCA's Executive Director on October 8, 2015. However, as noted above, the Executive Director or their designee is only authorized to grant one extension, which had already been provided, and the appeal was denied.

The County then timely filed an appeal addressed to TDHCA's Governing Board as allowed by 10 TAC §1.7(d). Accordingly, the Department is presenting this matter to the Governing Board for consideration.

Based on the County's documentation of progress and contingency plans to replace the construction contractor if necessary, staff believes that the home can be fully constructed if the request for additional time is approved. Because the cumulative total of this extension request exceeds 12 months, the Executive Director does not have authority to grant the extension, and Board approval is necessary. Staff recommends approval of the amendment request.

RUNNELS COUNTY



BARRY HILLIARD
COUNTY JUDGE
RUNNELS COUNTY COURTHOUSE
613 HUTCHINGS AVENUE, ROOM 103
BALLINGER, TEXAS 76821

PHONE (325) 365-2633

FAX (325) 365-3408

October 22, 2015

Chairman J. Paul Oxer, P.E.
Vice Chairman Dr. Juan Sanchez Muñoz
Ms. Leslie Bingham Escareño, Board Member
Mr. Tom H. Gann, Board Member
Mr. Tolbert Chisum, Board Member
Mr. J. B. Goodwin, Board Member
C/o Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711

Re:Appeal of Denial of Request for a 90 Day Extension- #1001740-RSP #2011-0092
Activity #39849 – Linda Reyes Escobar
Ballinger, Runnels County, Texas

Dear Governing Board:

According to 10 TAC §1.7(d), the County is appealing the denial by the Executive Director for Texas Department of Housing and Community Affairs for additional time to complete the reconstruction of the HOME recipient, Ms. Linda R. Escobar.

The County requested a second 90 day extension, which has been denied by the HOME staff for Single Family Division (SF) and now by the Executive Director. The Executive Director has stated in a letter to the County that he does not have the authority to grant a second extension due to Single Family HOME Rules at 10 TAC §23.27(f) limits the Department's ability to approve only one three (3) month extension. Please note that staff had granted one extension due to excessive rainfall in Runnels County in May and June 2015.

The County believes the extenuating circumstances with the current construction contractor contributed to the problems to complete Ms. Escobar's home. In numerous emails staring in June 2015, the construction contractor issued assurances via emails that the construction would be completed in a timely manner and by the completion date of October 5, 2015. The emails from the County's administrator requested updates from the contractor. Specifically, if the contractor could not finish the construction, he was instructed to notify the County and its administrator. Even as late as September 14, 2015, the construction contractor continued to state that he had not abandoned the job site and was continuing the work. But on October 2, 2015, the contractor met with the County Judge to inform the County that the construction activity could not

be completed on time. On October 6, 2015, the construction contractor issued a letter to the County and HOME Director of its inability to finish the project. (See attached documentation.)

The County requests that the Board for Texas Department of Housing and Community Affairs grant an additional 90 day extension for Activity #39849, that includes remaining program funds from SF, to complete the following:

Re-advertise to receive bids to complete the project to include a pre-bid walk-thru
Award to the lowest responsible bidder by Commissioners Court
Conduct a Preconstruction Conference with County, homeowner and construction contractor
Issue Notice to Proceed upon executed construction contract
Conduct progress inspections to include punch- list and final
Submission of Affidavit of Construction Completion/Closeout

The County is committed to Ms. Escobar to see her in a completed home from whom she left 10 months ago. TDHCA's assistance is greatly needed to finish her home.

Sincerely,

Barry Hilliard
County Judge

Attachments

NEW HOMES ★ REMODELING

TROPHY ROOMS ★ LODGES

June 2, 2014

Runnels County, Texas
Attn: Judge Barry Hilliard
613 Hutchings Ave.
Ballinger, Texas 76821

Re: REQUEST FOR EXTENSION
Contract No. 1001740 RSP #2011-0092, County of Runnels
705 N. 11th Street, Ballinger, Texas 76821

Dear Judge Hilliard:

We at Ameriway Construction Company are requesting a Contract Extension to August 31, 2015 due to the inclement weather that occurred for twenty-nine (29) days in January and February 2015 and the inclement weather and flooding in April and May 2015. The subcontractors that were scheduled to start the above referenced house are also behind approximately thirty (30) days on their pre-existing projects, including the framers, roofing and masonry contractors. We have been in contact with all of our subcontractors and have determined that the best reasonable time to restart the above referenced home due to their schedules will be middle-to-end of June 2015. Once we get the home dried in, I expect we will be finished in 45-60 days. Please advise and thank you for your cooperation in this matter.

Sincerely,

Jerry S. Reiner, President
Ameriway Construction Company, Inc.

Kay Howard <kay@howco.net>

Runnels Co - HOME

8 messages

Kay Howard <kay@howco.net> Fri, Jun 26, 2015 at 10:39 AM
To: Jerry Reiner <jerry_reiner@yahoo.com>, Ryan Neville <rneville22@yahoo.com>, Jerry Howard <jerry@howco.net>
Cc: Trink Saulters <katherine@howco.net>, Chris Krepps <chris@howco.net>

Jerry/Ryan,
Please provide a date as to when Ameriway Construction will resume work on the HOME Project.

If Ameriway Construction is not able to complete the contract at this time, please let us know.

Thank you

Kay Howard

--

A & J Howco Services Inc.

5714 – 40th Street

PO Box 64780

Lubbock, TX 79464-4780

Office 806/797-4299 Ext. 202

Fax 806/797-6041

Cell 806/789-4832

www.howco.net

" I don't know what your destiny will be, but one thing I know: The ones among you who will be really happy are those who have sought and found how to serve." Albert Schweitzer

---

Trink Saulters <katherine@howco.net> Fri, Jun 26, 2015 at 10:40 AM
To: kay@howco.net

Your message

To: Trink Saulters
Subject: Runnels Co - HOME
Sent: 6/26/15, 10:39:38 AM CDT

was read on 6/26/15, 10:40:15 AM CDT

Jerry Reiner <jerry_reiner@yahoo.com> Fri, Jun 26, 2015 at 10:57 AM
To: Kay Howard <kay@howco.net>

Hi Kay, Yes we are planning on proceeding forward! I was just in Runnels Co on Monday getting new bids on the framing/roofing/etc , we should have all of our updated matl. bids in by mid next week and our framer is telling us he is about a week or so out from being caught up due to all the rain in May and June. We will give you a update as soon as we have a firm date to start. If you have any questions please feel free to call or email us
Sincerly,
Jerry

Sent from Yahoo Mail on Android

From:"Kay Howard" <kay@howco.net>
Date:Fri, Jun 26, 2015 at 10:39 AM
Subject:Runnels Co - HOME

[Quoted text hidden]

Kay Howard <kay@howco.net> Fri, Jun 26, 2015 at 11:27 AM
To: Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Jerry Howard <jerry@howco.net>, Trink Saulters <katherine@howco.net>, Chris Krepps <chris@howco.net>, Ryan Neville <rneville22@yahoo.com>, Lisette Howard <Lisetteh@howco.net>

Thank you Jerry R.!

Kay
[Quoted text hidden]

Trink Saulters <katherine@howco.net> Fri, Jun 26, 2015 at 11:28 AM
To: kay@howco.net

Your message

To: Trink Saulters
Subject: Re: Runnels Co - HOME
Sent: 6/26/15, 11:27:53 AM CDT

was read on 6/26/15, 11:28:29 AM CDT

Jerry Reiner <jerry_reiner@yahoo.com> Fri, Jun 26, 2015 at 11:33 AM
To: Kay Howard <kay@howco.net>

Thank you Kay! We appreciate you and your business!

Sent from Yahoo Mail on Android

From:"Kay Howard" <kay@howco.net>
Date:Fri, Jun 26, 2015 at 11:27 AM
Subject:Re: Runnels Co - HOME

[Quoted text hidden]

Chris Krepps <chris@howco.net> Tue, Oct 6, 2015 at 11:04 AM
To: kay@howco.net

Your message

To: Chris Krepps
Subject: Runnels Co - HOME
Sent: 6/26/15, 10:39:38 AM CDT

was read on 10/6/15, 11:04:09 AM CDT

Chris Krepps <chris@howco.net> Tue, Oct 6, 2015 at 11:04 AM
To: kay@howco.net

Your message

To: Chris Krepps
Subject: Re: Runnels Co - HOME
Sent: 6/26/15, 11:27:53 AM CDT

was read on 10/6/15, 11:04:10 AM CDT

Kay Howard <kay@howco.net>

Runnells County - HOME Project

5 messages

Kay Howard <kay@howco.net> Mon, Jul 6, 2015 at 3:17 PM
To: Ryan Neville <rneville22@yahoo.com>, Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Jerry Howard <jerry@howco.net>, Chris Krepps <chris@howco.net>, Lisette Howard <Lisetteh@howco.net>, Jan Torres <jan@howco.net>

Jerry and Ryan,

The daughter of Ms. Escobar called today to inquire when work will commence again on Escobar's home.

Please let me know the start date to resume construction of the dwelling. I must give the Judge and the Escobar family answer by tomorrow.

Again, if Ameriway Construction is unable to resume construction, please notify the County with a termination notice.

Thank you!

Kay Howard

--

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---

Jerry Reiner <jerry_reiner@yahoo.com> Mon, Jul 6, 2015 at 3:19 PM
To: Kay Howard <kay@howco.net>, Ryan Neville <rneville22@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Jerry Howard <jerry@howco.net>, Chris Krepps <chris@howco.net>, Lisette Howard <Lisetteh@howco.net>, Jan Torres <jan@howco.net>

Hi Kay, We started todsy as i promised last week.

Thanks,
Jerry

Sent from Yahoo Mail on Android

From:"Kay Howard" <kay@howco.net>
Date: Mon, Jul 6, 2015 at 3:17 PM
Subject: Runnells County - HOME Project

[Quoted text hidden]

Trink Saulters <katherine@howco.net> Mon, Jul 6, 2015 at 3:28 PM
To: kay@howco.net

Your message

To: Trink Saulters
Subject: Runnells County - HOME Project
Sent: 7/6/15, 3:17:34 PM CDT

was read on 7/6/15, 3:28:43 PM CDT

Jan Torres <jan@howco.net> Tue, Jul 7, 2015 at 7:47 AM
To: kay@howco.net

Your message

To: Jan Torres
Subject: Runnells County - HOME Project
Sent: 7/6/15, 3:17:34 PM CDT

was read on 7/7/15, 7:47:11 AM CDT

Chris Krepps <chris@howco.net> Tue, Oct 6, 2015 at 11:04 AM
To: kay@howco.net

Your message

To: Chris Krepps
Subject: Runnells County - HOME Project
Sent: 7/6/15, 3:17:34 PM CDT

was read on 10/6/15, 11:04:22 AM CDT

Chris Krepps <chris@howco.net>

Runnels County - Escobar

Kay Howard <kay@howco.net> Thu, Jul 23, 2015 at 2:53 PM
To: Ryan Neville <rneville22@yahoo.com>, Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Jerry Howard <jerry@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>

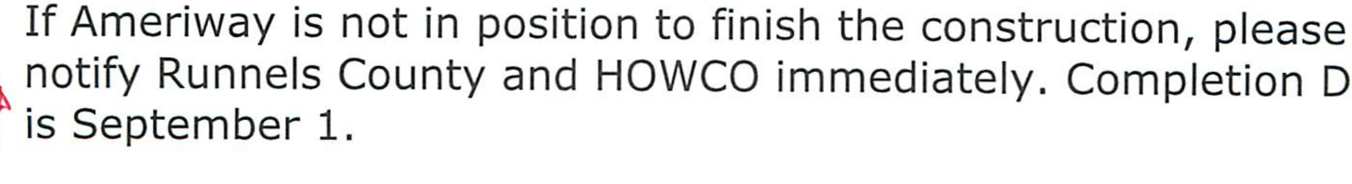
Good afternoon all,

Jerry H inspected Ms. Escobar home today.

Please note that the atttic access has not been "cut out". Also there is substantial debris around the dwelling. It is a fire hazard. Please clean up the site of debris that is flameable.

Please provide a date by Monday July 27 when the following will occur at the job site:

Roofing
Electrical Roughin
HVAC Roughin
Plumbing Stackout



If Ameriway is not in position to finish the construction, please notify Runnels County and HOWCO immediately. Completion Date is September 1.

Thank you for your cooperation!

Kay

--

A & J Howco Services Inc.

5714 – 40th Street

PO Box 64780

Lubbock, TX 79464-4780

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Fax 806/797-6041

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" I don't know what your destiny will be, but one thing I know: The ones among you who will be really happy are those who have sought and found how to serve." Albert Schweitzer

Kay Howard <kay@howco.net>

Runnels County - Escobar

Jerry Reiner <jerry_reiner@yahoo.com> Thu, Jul 23, 2015 at 8:37 PM
To: Kay Howard <kay@howco.net>

Hi Kay,
Since our last email in teference to 705 11th st , Ballimger , Texas we have completed the following:
Framing
Cornice
Decking
Windows
Ext Doors
Felt Paper
Framing Punch out (attic access to do)
Ext. Prep/caulk
Ext .Primer
Ext. Paint finish coat/accent coat

We have been experiencing some difficulty getting mech.,sub-,contractors to give us bids for just one home and also within our budjet, as for the local subs they are 40-65 percent higher then our budjet allows for, but we sent the plans out to about 10 mech., subs in hopes we will prevail soon and be able to finish the mechs., as for the rest our everday subs and employees will be able to handle the the finish out. The Judge ask for a 10/5/15 extesion which was granted by TDHCA however we all at Ameriway would like to complete asap as its expensive to make two-three trips to Ballinger a week, plus motel rooms for our crews for one home.
Our plans again are to finish asap
Sincerly,
Jerry

Sent from Yahoo Mail on Android

From:"Kay Howard" <kay@howco.net>
Date:Thu, Jul 23, 2015 at 1:53 PM
Subject:Runnels County - Escobar

Good afternoon all,

Jerry H inspected Ms. Escobar home today.

Please note that the atttic access has not been "cut out". Also there is substantial debris around the dwelling. It is a fire hazard. Please clean up the site of debris that is flameable.

Please provide a date by Monday July 27 when the following will occur at the job site:

Roofing
Electrical Roughin
HVAC Roughin
Plumbing Stackout

If Ameriway is not in position to finish the construction, please notify Runnels County and HOWCO immediately. Completion Date is September 1.

Thank you for your cooperation!

Kay Howard <kay@howco.net>

Runnels County - Escobar

Kay Howard <kay@howco.net> Mon, Jul 27, 2015 at 9:25 AM
To: Jerry Reiner <jerry_reiner@yahoo.com>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>
Cc: Jerry Howard <jerry@howco.net>, Trink Saulters <katherine@howco.net>, Chris Krepps <chris@howco.net>, Lisette Howard <Lisetteh@howco.net>, Ryan Neville <rneville22@yahoo.com>, Jan Torres <jan@howco.net>

Jerry,

Even though there is an extension, Ameriway still has more construction tasks to complete. You did not provide a date as to when Ameriway will begin the completion of the items:

Roofing
Electrical Roughin
HVAC Roughin
Plumbing Stackout

Please provide a date as to when these tasks will be completed.

If Ameriway cannot complete the construction of this dwelling, please let the County and HOWCO know in order that the County may bid the remaining items to fininsh the dwelling. Ms.Escobar has been out of her home for many months now.

Also please acknowledge that Ms. Escobar only wants vinyl throught out her new home. She does not want carpet due to allergies of her grandson.

Please provide a response by Wed. 29th.

Thank you

Kay
[Quoted text hidden]

Kay Howard <kay@howco.net>

Runnels County - Escobar

Jerry Reiner <jerry_reiner@yahoo.com> Wed, Jul 29, 2015 at 1:35 PM
Reply-To: Jerry Reiner <jerry_reiner@yahoo.com>
To: Kay Howard <kay@howco.net>
Cc: Trink Saulters <katherine@howco.net>, Jerry Howard <jerry@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>, Jerry Reiner <jerry_reiner@yahoo.com>

Hi Kay,

So sorry for the delayed response to your last email regarding status of the mechanical trades scheduled for 705 N. 11th St., Ballinger, TX, as we were hoping to have an update as to their bids and schedules by the time of this response. However, it has been a much more difficult task to find an HVAC/Electrical contractor to go to Ballinger for one house, and the prices reflect this, some being double what we are used to paying. However, we are still receiving bids and hope to go forward once we receive a fair market price and hope to schedule them quickly. We have the plumber lined out as soon as we release the bids to the HVAC/Electrical contractors. Our regular contractor from Eagle Pass feels it is too far to go and would not be cost effective to do Ballinger. As for the trash and yard maintenance, we are working on getting that done this week or no later than next week. We have no reason not to proceed forward on the home unless you and the county feel Ms. Escobar would be better served by having a local contractor finish. However, we have visited with a few local subcontractors and their price points are 30-50 percent higher than ours. When Chris and I talked in December about doing this home, we both thought that we would run into these problems but were both willing to try to work through them without too much financial risk. Please advise us on your thoughts as we are still pushing forward.

Sincerely,
J.S. Reiner

JERRY S. REINER, PRESIDENT
AMERIWAY CONSTRUCTION CO.
P.O. BOX 295097
KERRVILLE, TEXAS 78029-5097
830-895-7000 ph.
830-895-7002 fax
830-928-7007 cell
jerry_reiner@yahoo.com

From: Kay Howard <kay@howco.net>
To: Ryan Neville <rneville22@yahoo.com>; Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>; Jerry Howard <jerry@howco.net>; Lisette Howard <Lisetteh@howco.net>; Chris Krepps <chris@howco.net>; Jan Torres <jan@howco.net>
Sent: Thursday, July 23, 2015 2:53 PM
Subject: Runnels County - Escobar

Kay Howard <kay@howco.net>

Runnels County - Escobar

Jerry Reiner <jerry_reiner@yahoo.com> Thu, Jul 30, 2015 at 2:21 PM
Reply-To: Jerry Reiner <jerry_reiner@yahoo.com>
To: Trink Saulters <katherine@howco.net>, Kay Howard <kay@howco.net>
Cc: Ryan Neville <rneville22@yahoo.com>, Jerry Howard <jerry@howco.net>, Chris Krepps <chris@howco.net>, Lisette Howard <Lisetteh@howco.net>, Jerry Reiner <jerry_reiner@yahoo.com>

Trink,

Ameriway has planned doing all vinyl since the beginning of the project. As far as the power goes, it has not been turned back on yet. It will need to be turned on before things can proceed further.

Sincerely,
Ryan

JERRY S. REINER, PRESIDENT
AMERIWAY CONSTRUCTION CO.
P.O. BOX 295097
KERRVILLE, TEXAS 78029-5097
830-895-7000 ph.
830-895-7002 fax
830-928-7007 cell
jerry_reiner@yahoo.com

From: Trink Saulters <katherine@howco.net>
To: Kay Howard <kay@howco.net>
Cc: Ryan Neville <rneville22@yahoo.com>; Jerry Reiner <jerry_reiner@yahoo.com>; Jerry Howard <jerry@howco.net>; Chris Krepps <chris@howco.net>; Lisette Howard <Lisetteh@howco.net>
Sent: Thursday, July 30, 2015 1:42 PM
Subject: Re: Runnels County - Escobar
[Quoted text hidden]

Kay Howard <kay@howco.net>

Re: BALLINGER

1 message

Jerry Reiner <jerry_reiner@yahoo.com> Fri, Aug 7, 2015 at 4:54 PM
Reply-To: Jerry Reiner <jerry_reiner@yahoo.com>
To: Jerry Howard <jerry@howco.net>, Kay Howard <kay@howco.net>
Cc: Jerry Reiner <jerry_reiner@yahoo.com>

Jerry/Kay,

We have a plumber going up on Tuesday next week. He will be starting the top-out early Wednesday morning. However, will still are having a devil of a time finding the electrician & HVAC who will work with our budget for only one house. We're still looking. I may have one who does both, but scheduling has been a problem. Jerry and I will both be up there next week.

Ryan

JERRY S. REINER, PRESIDENT
AMERIWAY CONSTRUCTION CO.
P.O. BOX 295097
KERRVILLE, TEXAS 78029-5097
830-895-7000 ph.
830-895-7002 fax
830-928-7007 cell
jerry_reiner@yahoo.com

From: Jerry Howard <jerry@howco.net>
To: Jerry Reiner Ameriway Construction Co. <jerry_reiner@yahoo.com>
Sent: Thursday, August 6, 2015 11:55 AM
Subject: BALLINGER

Need progress report

Kay Howard <kay@howco.net>

Runnels County HOME Project - Escobar 705 N. 11th Street

Kay Howard <kay@howco.net> Mon, Aug 17, 2015 at 12:44 PM
To: Jerry Reiner <jerry_reiner@yahoo.com>, Ryan Neville <rneville22@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>, Jerry Howard <jerry@howco.net>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>

Ryan and Jerry R,

Please provide a construction update on the HOME project at 705 N. 11th Street.

Thank you!

Kay

--

A & J Howco Services Inc.

5714 – 40th Street

PO Box 64780

Lubbock, TX 79464-4780

Office 806/797-4299 Ext. 202

Fax 806/797-6041

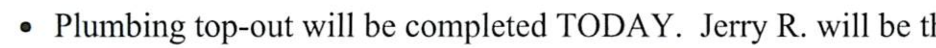
Cell 806/789-4832

www.howco.net

" I don't know what your destiny will be, but one thing I know: The ones among you who will be really happy are those who have sought and found how to serve." Albert Schweitzer

Kay Howard <kay@howco.net>

Runnels County HOME Project - Escobar 705 N. 11th Street



Jerry Reiner <jerry_reiner@yahoo.com> Tue, Aug 18, 2015 at 12:58 PM
Reply-To: Jerry Reiner <jerry_reiner@yahoo.com>
To: Kay Howard <kay@howco.net>
Cc: Trink Saulters <katherine@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>, Jerry Howard <jerry@howco.net>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>, Jerry Reiner <jerry_reiner@yahoo.com>, Ryan Neville <rneville22@yahoo.com>

Kay,

- Plumbing top-out will be completed TODAY. Jerry R. will be there to inspect it.
- Jerry R. is also meeting with somebody this afternoon with regard to picking up and hauling off the trash. This should be done within the next day or two.
- We are still looking for electrical and HVAC contractor. Ones I have been in contact with are too high-priced and/or too busy. I do have one interested who does both electrical and HVAC and may be able to meet with Jerry R. later this afternoon or on Thursday. I am hoping this will be the one. He is busy this week but could possibly start next week.
- Not having the power on has also put us in a bind, but now that it is on we should be able to move things along. I have a bricklayer who would like to do the job, possibly a roofer.

Will try to keep you updated daily from here on.

Sincerely,
Ryan

JERRY S. REINER, PRESIDENT
AMERIWAY CONSTRUCTION CO.
P.O. BOX 295097
KERRVILLE, TEXAS 78029-5097
830-895-7000 ph.
830-895-7002 fax
830-928-7007 cell
jerry_reiner@yahoo.com

From: Kay Howard <kay@howco.net>
To: Jerry Reiner <jerry_reiner@yahoo.com>; Ryan Neville <rneville22@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>; Lisette Howard <Lisetteh@howco.net>; Chris Krepps <chris@howco.net>; Jan Torres <jan@howco.net>; Jerry Howard <jerry@howco.net>; Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>
Sent: Monday, August 17, 2015 12:44 PM
Subject: Runnels County HOME Project - Escobar 705 N. 11th Street
[Quoted text hidden]

Kay Howard <kay@howco.net>

Runnels County HOME Project - Escobar 705 N. 11th Street

rneville22 <rneville22@yahoo.com> Mon, Aug 24, 2015 at 3:20 PM
To: Kay Howard <kay@howco.net>
Cc: Trink Saulters <katherine@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>, Jerry Howard <jerry@howco.net>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>, jerry_reiner@yahoo.com

Kay,

Plumbing top out was completed and the yard was cleaned up on Thursday, 8/20. I have the electrician scheduled to begin Wednesday morning, possibly could start Tuesday afternoon if schedule lightens. Wiring should be done by Friday. Still working on an HVAC that's even close to budget. Will keep you posted.

Ryan

Sent from my Sprint Samsung Galaxy S® 6.
-------- Original message --------
From: Kay Howard <kay@howco.net>
Date: 08/22/2015 12:26 PM (GMT-06:00)
To: Jerry Reiner <jerry_reiner@yahoo.com>, Ryan Neville <rneville22@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>, Jerry Howard <jerry@howco.net>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>
Subject: Re: Runnels County HOME Project - Escobar 705 N. 11th Street

[Quoted text hidden]

Kay Howard <kay@howco.net>

Runnels County HOME Project - Escobar 705 N. 11th Street

Kay Howard <kay@howco.net> Sat, Aug 22, 2015 at 12:26 PM
To: Jerry Reiner <jerry_reiner@yahoo.com>, Ryan Neville <rneville22@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Lisette Howard <Lisetteh@howco.net>, Chris Krepps <chris@howco.net>, Jan Torres <jan@howco.net>, Jerry Howard <jerry@howco.net>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>

Jerry R. and Ryan,

Please provide an update for the Runnels Co. HOME project.

Thanks

Kay

[Quoted text hidden]

Chris Krepps <chris@howco.net>

Runnels Co. - 705 11th Street

3 messages

Kay Howard <kay@howco.net> Mon, Sep 14, 2015 at 5:37 PM
To: Ryan Neville <rneville22@yahoo.com>, Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Jerry Howard <jerry@howco.net>, Chris Krepps <chris@howco.net>

Ryan and Jerry R.

It appears by your no-reply/response to emails and voice mails that Ameriway Construction has abandoned the job site and work in progress for Escobar 705 N. 11th Street, Ballinger, Runnels County Tx.

The County will be notified with their options.

Kay Howard

--

A & J Howco Services Inc.

5714 – 40th Street

PO Box 64780

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" I don't know what your destiny will be, but one thing I know: The ones among you who will be really happy are those who have sought and found how to serve." Albert Schweitzer

---

Trink Saulters <katherine@howco.net> Mon, Sep 14, 2015 at 5:40 PM
To: Chris Krepps <chris@howco.net>

[Quoted text hidden]

Kay Howard <kay@howco.net> Mon, Sep 14, 2015 at 5:50 PM
To: Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>, Jerry Howard <jerry@howco.net>, Chris Krepps <chris@howco.net>, Lisette Howard <Lisetteh@howco.net>, Jan Torres <jan@howco.net>

Jerry,

Thank you for your email!

No one responded to my voicemails.

So when will the home be completed?

TDHCA has notified the County that the contract will end.

Dear **Runnels County**:

I am contacting you to remind you that your Reservation Activity for the**Linda Reyes Escobar** under activity setaside **1001740** will end within 30 days. The end date of the Household Commitment Contract is **10/5/2015**. You will be able to request reimbursement for expenses incurred on or before **10/5/2015** for no more than 60 calendar days after the end date. After this date, funds will no longer be available for draw.

On Mon, Sep 14, 2015 at 5:42 PM, Jerry Reiner <jerry_reiner@yahoo.com> wrote:

Kay , we have not abandoned the job, i beleave the HVAC is going in Wednesday or Thursday , the insulation and sheetrock are ordered to be shipped to the house as soon as the HVAC is inspected, i have made several calls for a brick selection. We have been in the process of moving our office and Ryan has no internet.
Jerry

Sent from Yahoo Mail on Android

From:"Kay Howard" <kay@howco.net>
Date:Mon, Sep 14, 2015 at 5:38 PM
Subject:Runnels Co. - 705 11th Street

[Quoted text hidden]

[Quoted text hidden]

Chris Krepps <chris@howco.net>

Runnels Co. 1001740 Linda Escobar

1 message

Kay Howard <kay@howco.net> Mon, Oct 5, 2015 at 10:59 AM
To: Ryan Neville <rneville22@yahoo.com>, Jerry Reiner <jerry_reiner@yahoo.com>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>, Barry Hilliard <rcjudge@wtxs.net>, Kay Fairbanks <kay.fairbanks@tdhca.state.tx.us>, Jennifer Molinari <Jennifer.molinari@tdhca.state.tx.us>
Cc: Trink Saulters <katherine@howco.net>, Chris Krepps <chris@howco.net>

Ryan and Jerry R.,

The County was notified on Friday October 2, 2015 by Ryan that Ameriway Construction cannot finish the project by the end date of October 5.

Does Ameriway Construction have any of the following material purchased to finish the project?

Exterior Siding
Roofing
Insulation
Sheetrock
Trim/Cabinets
Interior paint
Flooring
H/VAC
Appliances and plumbing fixtures

Please advise asap.

Kay Howard

P.O. BOX 295097

KERRVILLE, TEXAS 78029-5097

830-895-7000 ph.

830-895-7002 fax

830-928-7007 cell

jerry_reiner@yahoo.com

From: Kay Howard <kay@howco.net>
To: Jennifer Molinari <Jennifer.molinari@tdhca.state.tx.us>; Kay Fairbanks <kay.fairbanks@tdhca.state.tx.us>; Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>; Barry Hilliard <rcjudge@wtxs.net>; Ryan Neville <rneville22@yahoo.com>; Jerry Reiner <jerry_reiner@yahoo.com>
Cc: Trink Saulters <katherine@howco.net>; Chris Krepps <chris@howco.net>; Lisette Howard <Lisetteh@howco.net>
Sent: Monday, October 5, 2015 10:42 AM
Subject: Runnels County HOME - Linda Reyes Escobar #1001740
[Quoted text hidden]

Kay Howard <kay@howco.net>

Runnels County HOME - Linda Reyes Escobar #1001740

Jerry Reiner <jerry_reiner@yahoo.com> Mon, Oct 5, 2015 at 1:52 PM
Reply-To: Jerry Reiner <jerry_reiner@yahoo.com>
To: Kay Howard <kay@howco.net>, Jennifer Molinari <Jennifer.molinari@tdhca.state.tx.us>, Kay Fairbanks <kay.fairbanks@tdhca.state.tx.us>, Chrissy Gosdin <christina.gosdin@co.runnels.tx.us>, Barry Hilliard <rcjudge@wtxs.net>
Cc: Trink Saulters <katherine@howco.net>, Chris Krepps <chris@howco.net>, Lisette Howard <Lisetteh@howco.net>, Jerry Reiner <jerry_reiner@yahoo.com>, Ryan Neville <rneville22@yahoo.com>

Dear all,

Per my meeting with Judge Hilliard on Friday, October 2, 2015, Ameriway Construction Company is unable to finish construction of the project at 705 N. 11th Street, Ballinger, Runnels County, Texas by the October 5, 2015 deadline. Ameriway would like to convey its most sincere apologies for this and would like to, as stated to Judge Hilliard on Friday, express its commitment to finishing the project. The reasons for not being able to finish the project by the October 5th deadline are as follows:

1. Due to the nature of there being only one house, most of the subcontractors we work with have not been willing to travel for the purpose of working on one house. Those who have expressed interest were at the same time not willing to work within our budget for the job.
2. Ameriway has contacted several local/area subcontractors. However, once again they have bid to high for the job budget. As I explained to Judge Hilliard on Friday, we have in fact gone substantially over our intended budget already in order to complete as much as we have. We really cannot afford to go even further over budget from where we are currently.

Prior to the project beginning, Ameriway expressed concerns to Chris Krepps of A.J. Howco of these issues regarding the above stated reasons. As priorly expressed, Ameriway would be 100% committed to complete the project in a timely manner from here on out if it is the County of Runnels desire for us to do so. Mr. Reiner is meeting with a contractor this Tuesday, October 6 who is interested in finishing the non-mechanical phases, and we still have the three mechanical contractors on-board to finish.

If, however, it is not in the County of Runnels's best interest for Ameriway to complete the project, we respectably accept and understand its decision. In that event, Ameriway will do whatever is necessary to make the transition as smooth as possible. We would request to be paid for the HVAC rough-in work that has been completed, as well as any retainage due for work that has been completed. Please advise on how to proceed from here on out and thank you sincerely for your continued cooperation in this matter.

Very sincerely,
Ryan Neville
Ameriway Construction Company

JERRY S. REINER, PRESIDENT
AMERIWAY CONSTRUCTION CO.

October 6, 2015

Attn: Ms. Jennifer Molinari
HOME Program Director
Texas Department of Housing and Community Affairs
221 East 11th Street
P.O. Box 13941
Austin, Texas 78711-3941

RE: HOME HRA Contract 1001740
705 N. 11th Street, Ballinger, Runnels County, Texas 76821

Dear Ms. Molinari:

Per my meeting with Judge Hilliard on Friday, October 2, 2015, Ameriway Construction Company is unable to finish construction of the project at 705 N. 11th Street, Ballinger, Runnels County, Texas by the October 5, 2015 deadline. **Ameriway would like to convey its most sincere apologies for this and would like to, as stated to Judge Hilliard on Friday, express its commitment to finishing the project.** The reasons for not being able to finish the project by the October 5th deadline are as follows:

1. Due to the nature of there being only one house, most of the subcontractors we work with have not been willing to travel for the purpose of working on one house. Those who have expressed interest were at the same time not willing to work within our budget for the job.
2. Ameriway has contacted several local/area subcontractors. However, once again they have bid to high for the job budget. As I explained to Judge Hilliard on Friday, we have in fact gone substantially over our intended budget already in order to complete as much as we have. We really cannot afford to go even further over budget from where we are currently.

Ameriway would also like to clarify any questions regarding Ms. Kay Howard's October 5 e-mail list of remaining items left to be completed. The following items HAVE BEEN COMPLETED:

1. Foundation and Flatwork
2. Framing, Cornice and Exterior Siding
3. Windows and Exterior Doors
4. Roofing—Installation of Felt Paper
5. Plumbing Underground & Utilities

6. HVAC Rough-in: **has not yet been invoiced by Ameriway**
7. Electrical Rough-in/Top-out
8. Plumbing Rough-in/Top-out

The following items below HAVE NOT BEEN COMPLETED:
1. Brick Veneer
2. Wall Insulation & Sheetrock
3. Roofing—Installation of Shingles
4. Interior Trim/Hardware
5. Interior Paint
6. Flooring
7. Appliances
8. Electrical Fixtures (Trim-out)
9. Plumbing Fixtures (Trim-out)
10. Final Site Clean-up

Note: Ameriway has not yet invoiced nor purchased any materials for the above ten (10) items yet to be completed.

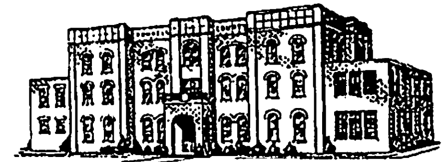
Prior to the project beginning, Ameriway expressed concerns to Chris Krepps of A.J. Howco of these issues regarding the above stated reasons. As priorly expressed, **Ameriway would be 100% committed to complete the project in a timely manner (based on availability of subcontractors)** if it is the County of Runnels desire for us to do so. Mr. Jerry Reiner is meeting with a contractor this Tuesday, October 6 who is interested in finishing the non-mechanical phases, and we still have the three mechanical contractors on-board to finish.

If, however, it is not in the County of Runnels's best interest for Ameriway to complete the project, we respectably accept and understand its decision. In that event, Ameriway will do whatever is necessary to make the transition as smooth as possible. We would request to be paid for the HVAC rough-in work that has been completed, as well as any retainage due for work that has been completed. Please advise on how to proceed from here on out and thank you sincerely for your continued cooperation in this matter.

Very sincerely,
Ryan Neville
Ameriway Construction Company

P.O. Box 295097, Kerrville, Texas 78029-5097 jerry_reiner@yahoo.com 830-895-7000

RUNNELS COUNTY



BARRY HILLIARD
COUNTY JUDGE
RUNNELS COUNTY COURTHOUSE
613 HUTCHINGS AVENUE, ROOM 103
BALLINGER, TEXAS 76821
PHONE (325) 365-2633
FAX (325) 365-3408

October 8, 2015

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: Appeal for Extension -#1001740 – RSP #2011-0092
Activity #39849 – Linda Reyes Escobar
Ballinger, Runnels County, Texas

Dear Mr. Irvine:

According to the Department's Administrative Rules at 10 TAC §107(b) (2) (A), the County is appealing the denial for additional time to complete the reconstruction of the recipient, Ms. Linda R. Escobar's home.

The HOME staff for Single Family Division with Texas Department of Housing and Community Affairs has stated that they cannot approve any further time extensions to complete the reconstruction of Ms. Escobar's home. It is noted that the staff has already granted one extension due to excessive rain in Runnels County in May and June. 2015.

The County believes the extenuating circumstances with the current contractor contributed to the completion problem with Ms. Escobar's home. The Contractor assured the County in numerous emails sent to the consultant that the construction would be finished in a timely manner. By these emails, the Contractor acknowledged the deadline date of October 5, 2015. The emails sent to the Contractor contain language in regards to problems with completion. Specifically, the Contractor was asked to notify the County of the Contractor's inability to complete the project on time. In a personal visit on October 2, 2015, he Contractor did notify the County that the company was unable to finish the project. This notification occurred even after a September 14 email from the contractor with assurance to complete the project. (See attached documentation.)

The County requests additional extension of 90 days for Activity #39849, that includes funding from SF, to complete the following:

Re-advertise to receive bids to complete the project to include a pre-bid walk-thru
Award to the lowest bidder by Commissioners Court
Preconstruction Conference
Notice to Proceed
Progress inspections to include punch-list and final
Submission of Affidavit of Construction Completion/Closeout

Approval of the time extension to the County to complete the reconstruction of Ms. Escobar's home will be greatly appreciated.

Sincerely,

Barry Hilliard
County Judge

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

October 20, 2015

Writer's direct phone # 512.475.3296
Email: tim.irvine@tdhca.state.tx.us

The Honorable Barry Hilliard
County Judge
Runnels County
613 Hutchings Avenue, Room 103
Ballinger, TX 76821

RE: APPEAL OF DENIAL OF REQUEST FOR A 90 DAY EXTENSION - #1001740 – RSP #2011-0092
ACTIVITY #39849 – LINDA REYES ESCOBAR
BALLINGER, RUNNELS COUNTY, TEXAS

Dear Judge Hilliard:

The Texas Department of Housing and Community Affairs ("TDHCA" or "Department") is in receipt of your letter dated October 8, 2015, appealing the HOME Division's denial of a request on behalf of Ballinger County (the "County") to amend and extend the County's Household Commitment Contract ("HCC") in order to allow for the delayed completion of construction activities on the home located at 705 N 11th St., Ballinger, TX 76821. According to correspondence received, extenuating circumstances present included multiple attempts by the County to confirm with the contractor that the home would have been completed by October 5, 2015. Despite repeated assurance by the contractor that construction would be complete by the deadline, the contractor notified the County on October 2, 2015, that they would not be able to finish construction on time.

The County requested a 60 day extension from the HOME Division on October 5, 2015. On October 6, 2015, the HOME Division notified the County that since the Department already approved an extension in June 2015, extending the HCC to October 5, 2015, staff could not approve any further extensions. The County was notified that they could appeal the decision to TDHCA's Executive Director in accordance with the Department's Administrative Rules at 10 Texas Administrative Code ("TAC") §1.7(b)(2).

Based on the information provided in the appeal, I believe the County has demonstrated that it had attempted to ensure timely completion; however, despite repeated assurances received from the contractor, ultimately the construction was not completed within the contract term. In the appeal letter,

the County provided detailed steps that can be taken to complete construction activities and asked for a 90 day extension, 30 days more than originally requested on October 5, 2015.

The Department appreciates the information provided by the County; however, under the rules I do not have the authority to grant any further extensions and therefore I must deny the request. The Single Family HOME Rules at 10 TAC §23.27(f) limit the Department's approval to one three (3) month extension, which has already been granted. The County may appeal this denial to TDHCA's Governing Board as allowed by 10 TAC §1.7(d). Should the County wish to appeal this decision, the appeal must be in writing and addressed to the Department's Governing Board no later than October 27, 2015. Upon receipt of the request, staff will place the matter before the Governing Board at the November 12, 2015, meeting.

In the meantime, if you have any questions, please feel free to contact me at 512.475.3296 or via email at tim.irvine@tdhca.state.tx.us.

Respectfully,

Timothy K. Irvine
Executive Director

TKI/jm

cc: Kay Howard, HOWCO

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BOARD ACTION REQUEST

HOME PROGRAM DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action to authorize the issuance of an Amendment to the 2015 HOME Single Family Programs Reservation System Notice of Funding Availability ("NOFA") for Single Family Non-Development Programs, and publication of the amended NOFA in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Department published the 2015 HOME Single Family Programs Reservation System NOFA in the *Texas Register* on September 18, 2015, making available approximately $4,078,781 in 2015 HOME Program funds for HOME Program single family activities beginning on December 18, 2015;

WHEREAS, the Department has recently identified approximately $6,000,000 of HOME Program Income and deobligated funds that are not currently programmed in an existing NOFA;

WHEREAS, the Department recently received requests from stakeholders that NOFA funds available for Homebuyer Assistance be held for that activity for a longer period of time prior to the collapse of the funding category and staff is supportive of the stakeholder request; and

WHEREAS, the Department desires to amend the NOFA to add the HOME Program Income and deobligated funds promptly;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to publish an amended 2015 HOME Single Family Programs Reservation NOFA in the *Texas Register,* reflecting the changes presented in this meeting.

BACKGROUND

The U.S. Department of Housing and Urban Development's ("HUD") State of Texas 2015 allocation for the HOME Program is $21,575,627. The Board previously programmed those funds for various uses in accordance with the HUD-approved 2015 Consolidated Plan One-Year Action Plan ("OYAP"). In September staff released a HOME Single Family Programs Reservation System NOFA that includes $4,078,781 of the 2015 HOME allocation for mandatory set asides of Persons with Disabilities, Disaster Relief, and Contract for Deed Conversion. Concurrently, a 2015 HOME Single Family Program Competitive NOFA for general set-aside projects had been released;

applications have been received and award recommendations will be presented to the Board in December. To the extent any funds remain from the Competitive NOFA after awards are made, they may be added to the Reservation System in accordance with that NOFA.

This Board action amends the Reservation System NOFA by adding approximately $6,000,000 to the 2015 Single Family Programs Reservation NOFA, for a total of at least $10,078,781 available to single family HOME Program Reservation System Administrators for HOME single-family activities. Of the additional $6,000,000, the Persons with Disabilities set-aside will receive an additional $1,000,000, and the general set-aside will receive an additional $5,000,000. In response to stakeholder input, staff is also proposing to release the funds by activity type within the set-asides, and to extend the time period during which funds are held within the Homebuyer Assistance set-asides for both Persons with Disabilities and general set-aside funds.

Fund Distribution

Persons with Disabilities ("PWD") Set-Aside – Funds in the amount of $1,078,781 will be added to the existing reservation balance and made available beginning Friday, December 18, 2015, as follows.

- Homeowner Rehabilitation Assistance ("HRA") – $366,785 in funding will be made available starting at 10:30 a.m. CST for HRA activities until March 1, 2016, at 9:00 a.m. CST, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

- Homebuyer Assistance ("HBA") – $355,998 in funding will be made available starting at 10:00 a.m. CST for HBA activities until June 1, 2016, at 9:00 a.m. CDT, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

- Tenant-Based Rental Assistance ("TBRA") – $355,998 in funding will be made available starting at 9:30 a.m. CST for TBRA activities until March 1, 2016, at 9:00 a.m. CST at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

Additional PWD funds in the amount of $1,000,000 will be made available on January 29, 2016, as follows.

- Homeowner Rehabilitation Assistance ("HRA") – $600,000 in funding will be made available starting at 10:30 a.m. CST for HRA activities until March 1, 2016, at 9:00 a.m. CST, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

- Homebuyer Assistance ("HBA") – $50,000 in funding will be made available starting at 10:00 a.m. CST for HBA activities until June 1, 2016, at 9:00 a.m. CDT, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

- Tenant-Based Rental Assistance ("TBRA") – $350,000 in funding will be made available starting at 9:30 a.m. CST for TBRA activities until March 1, 2016, at 9:00 a.m. CST at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

Contract for Deed Conversion ("CFDC") Set-Aside – Funds in the amount of $2,000,000 will be made available beginning Friday, December 18, 2015, at 9:00 am CST until June 1, 2016, at 9:00 a.m. CDT, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

Disaster Relief Set-Aside – Funds in the amount of $1,000,000 will be added to the existing reservation balance and made available beginning Friday, December 18, 2015, at 10:30 am CST until June 1, 2016, at 9:00 a.m. CDT, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

General Set-Aside for HRA, HBA, and TBRA – Funds of approximately $5,000,000 will be added to the existing reservation balance and be made available Friday, January 29, 2016, as follows.

- HRA – $3,000,000 in funding will be made available starting at 10:30 a.m. CST for HRA activities until March 1, 2016, at 9:00 a.m. CST, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

- HBA – $200,000 in funding will be made available starting at 10:00 a.m. CST for HBA activities until June 1, 2016, at 9:00 a.m. CDT, at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

- TBRA – $1,800,000 in funding will be made available starting at 9:30 a.m. CST for TBRA activities until March 1, 2016, at 9:00 a.m. CST at which time funds may be reprogrammed if insufficient demand exists in this set-aside.

An alternative timeline and method of releasing funds may be implemented, at the Department's sole discretion.

Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Participation in the Reservation System is not a guarantee of funding availability.

The availability and use of these funds are subject to state and federal regulations including, but not limited to Texas Administrative Code in Title 10 Part 1, Chapter 1, Administration, Chapter 2, Enforcement, Chapter 20, Single Family Umbrella Rule, and Chapter 23, the Single Family HOME Program, as amended ("HOME Program Rule"), and the federal regulation governing the HOME Program at 24 CFR Part 92, as amended ("HOME Final Rule").

The 2015 HOME Single Family Programs Reservation System NOFA was developed in accordance with the Single Family Umbrella and HOME Program Rules. Administrators will access the funds available under this NOFA either through existing agreements or by applying under an open application cycle.

This amendment to the NOFA will be published on the Department's website and in the *Texas Register* as a Miscellaneous Document Friday, November 20, 2015.

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BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on the 2016 Section 8 Payment Standards for the Housing Choice Voucher Program ("HCVP")

RECOMMENDED ACTION

WHEREAS, the Department is designated as a Public Housing Authority ("PHA") and operates a HCVP, and

WHEREAS, 24 CFR §982.503 requires PHAs to establish Payment Standards annually for areas served by its vouchers;

NOW, therefore, it is hereby

RESOLVED, that the 2016 HCVP Payment Standards for the Department in its role as a PHA, and in accordance with 24 CFR §982.505, are hereby approved in the form presented to this meeting.

BACKGROUND

The U.S. Department of Housing and Urban Development ("HUD") requires PHAs, such as the Texas Department of Housing and Community Affairs (the "Department") to annually adopt a payment standard schedule that establishes voucher payment standard amounts for each ("FMR") area in the PHA jurisdiction. The PHA must establish payment standard amounts for each "unit size," defined as the number of bedrooms (one-bedroom, two-bedrooms, etc.) in each housing unit.

The Department, operating as a PHA, may establish the payment standard amount at any level between 90% and 110% of the published FMR for that unit size. The establishment of the standard is important because it essentially determines whether a household will be able to find a unit they can afford with the voucher. In areas where market rents are high and there is high demand for rental units it can be challenging for a voucher holder to find a unit. Increased FMRs will aid in areas where voucher holders have had difficulty in finding acceptable units or affording units in more desirable areas. Higher FMRs provide additional choices and opportunities to tenants in highly competitive rental markets.

The importance of making sure a household's voucher actually provides enough assistance to house them is balanced with the importance of making sure recipients of vouchers are not over-subsidized. Providing more assistance per household than is truly needed to find a decent, safe affordable housing unit means fewer total households can be assisted. It is through these payment standards that the balance is established.

The Department currently operates its HCVP in 20 counties. For 2016 staff recommends establishing the payment standard as follows:

2016 Voucher Payment Standards

- Only two counties in 2015 had payment standards at 105%, with all others remaining at 100%. Those two counties, Comanche and Johnson, are no longer recommended in the 2016 Payment Standards to have the increased standard. Based on staff experience in households looking for units, the FMR seems sufficient to identify acceptable units in those counties.
- For 2016, fourteen of the twenty counties are recommended for payments standards at 100% of FMR
- In three of the remaining six counties, staff is recommending a payment standard of 105% of FMR for Austin, Lee, and Wharton Counties, with no change in the standard within the ZIP codes of each county
- In the remaining three counties, staff is recommending a payment standard of 105% of FMR for one or more ZIP codes listed in the attached standards in Ellis, Galveston and Waller counties.
- For Ellis County, the 105% of FMR standard applies to the zip codes that cover the cities of Ennis (75165) and Waxahachie (75167, 75165, 76065). For Waller County, the 105% of FMR standard applies to the ZIP code that covers the City of Pattison. For Galveston County, the 105% of FMR standard applies to the ZIP codes of 77517, 77546 and 77573, which are not city-specific.
- The rationale for the recommendation is because in the Department's actual experience with clients the FMRs in these areas are not supportive enough to allow households the ability to locate acceptable units at the adjusted FMR without causing a rent burden to the households.
- HUD requires that PHAs managing programs in the Dallas, TX HUD Metropolitan Fair Market Areas ("HMFA"), which the Department does, utilize the Small Area Fair Market Rents ("SAFMRs"). The SAFMRS are utilized in Denton and Ellis counties by ZIP code.

These new payment standards will become effective on January 1, 2016, and will be applied at the first annual reexamination following the effective date of the increase in the payment standard. This will affect the tenant upon a subsequent change to the Housing Assistance Payment ("HAP") contract such as relocating to a new unit or a change in the family's household composition. Households and property owners are given a minimum of 30 days to a maximum of 60 days prior to the change.

Staff recommends adopting these 2016 Payment Standards because they allow current tenants continued affordability in the units they have selected and help new tenants find decent, safe, sanitary, and affordable units. The attached Exhibit A details the Department's recommended 2016 Payment Standards. In jurisdictions outside of the Department's service areas, the Department will adopt the payments standards in use by neighboring PHA jurisdictions, for Project Access families.

These Payment Standards are proposed based on HUD's publication of FMRs and SAFMRs in the *Federal Register*. If any FMR or SAFMR changes in the final version adopted by HUD, the Department will adopt HUDs final adopted FMR or SAFMR, but will leave the payment standard rate as that adopted in this action. If needed, a utility allowance will be established.

2016 Voucher Payment Standards

	Bedroom Size				
	REGION	1 BR	2 BR	3 BR	4 BR
Austin County:					
HUD FMR	H	607	807	1057	1404
Payment Standard		637	847	1110	1474
% of Payment Standard		105%	105%	105%	105%
Brazoria County:					
HUD FMR	H	699	860	1136	1501
Payment Standard		699	860	1136	1501
% of Payment Standard		100%	100%	100%	100%
Caldwell County:					
HUD FMR	S	832	1113	1505	1824
Payment Standard		832	1113	1505	1824
% of Payment Standard		100%	100%	100%	100%
Chambers County:					
HUD FMR	H	766	939	1279	1634
Payment Standard		766	939	1279	1634
% of Payment Standard		100%	100%	100%	100%
Colorado County:					
HUD FMR	H	498	651	949	1137
Payment Standard		498	651	949	1137
% of Payment Standard		100%	100%	100%	100%
Comanche County:					
HUD FMR	F	486	651	871	892
Payment Standard		486	651	871	892
% of Payment Standard		100%	100%	100%	100%
Denton County: Pilot Point					
HUD FMR	F	730	910	1230	1560
Payment Standard		730	910	1230	1560
% of Payment Standard		100%	100%	100%	100%
Denton County: Sanger					
HUD FMR	F	820	1010	1370	1730
Payment Standard		820	1010	13780	1730
% of Payment Standard		100%	100%	100%	100%
Ellis County: Ennis Zip Code: 75165					
HUD FMR	F	720	890	1210	1530
Payment Standard		756	934	1271	1606
% of Payment Standard		105%	105%	105%	105%

2016 Voucher Payment Standards

	Bedroom Size				
	REGION	1 BR	2 BR	3 BR	4 BR
*Ellis County: Ennis Zip Code: 75119 HUD FMR	F	650	800	1080	1370
Payment Standard		650	800	1080	1370
% of Payment Standard		100%	100%	100%	100%
*Ellis County: Italy HUD FMR	F	650	800	1080	1370
Payment Standard		650	800	1080	1370
% of Payment Standard		100%	100%	100%	100%
Ellis County: Waxahachie Zip Code: 75167 HUD FMR	D	1070	1320	1790	2270
Payment Standard		1124	1386	1879	2383
% of Payment Standard		105%	105%	105%	105%
Ellis County: Waxahachie Zip Code: 76065 HUD FMR	F	840	1040	1410	1780
Payment Standard		882	1092	1480	1869
% of Payment Standard		105%	105%	105%	105%
Ellis County: Waxahachie Zip Code: 75165 HUD FMR	H	750	930	1260	1600
Payment Standard		787	976	1323	1680
% of Payment Standard		105%	105%	105%	105%
Erath County: HUD FMR	D	610	747	949	1054
Payment Standard		610	747	949	1054
% of Payment Standard		100%	100%	100%	100%
Falls County: HUD FMR	F	486	651	817	1081
Payment Standard		486	651	817	1081
% of Payment Standard		100%	100%	100%	100%
Fort Bend County: HUD FMR	H	766	939	1279	1634
Payment Standard		766	939	1279	1634
% of Payment Standard		100%	100%	100%	100%
% of Payment Standard		100%	100%	100%	10%

2016 Voucher Payment Standards

	Bedroom Size				
	REGION	1 BR	2 BR	3 BR	4 BR
Freestone County:					
HUD FMR	S	486	651	859	1033
Payment Standard		486	651	859	1033
% of Payment Standard		100%	100%	100%	100%
Galveston County: Excluding Zip Codes: 77546, 77517, 77546	S				
HUD FMR		766	939	1279	1634
Payment Standard		804	986	1343	1716
% of Payment Standard		105%	105%	105%	105%
Galveston County: Zip Codes: 77517, 77546, 77573					
HUD FMR	S	766	939	1279	1634
Payment Standard		804	986	1343	1716
% of Payment Standard		105%	105%	105%	105%
Grimes County:					
HUD FMR	S	486	651	904	1033
Payment Standard		486	651	904	1033
% of Payment Standard		100%	100%	100%	100%
Lee County:					
HUD FMR	S	562	651	889	892
Payment Standard		590	683	933	936
% of Payment Standard		105%	105%	105%	105%
Llano County:					
HUD FMR	F	611	738	1076	1171
Payment Standard		611	738	1076	1171
% of Payment Standard		100%	100%	100%	100%
McLennan County:					
HUD FMR	S	577	770	1043	1233
Payment Standard		577	770	1043	1233
% of Payment Standard		100%	100%	100%	100%
Medina County:					
HUD FMR	H	486	651	944	1050
Payment Standard		486	651	944	1050
% of Payment Standard		100%	100%	100%	100%

2016 Voucher Payment Standards

	Bedroom Size				
	REGION	1 BR	2 BR	3 BR	4 BR
Waller County (except Pattison)					
HUD FMR	H	766	939	1279	1634
Payment Standard		766	939	1279	1634
% of Payment Standard		100%	100%	100%	100%
Waller County: Pattison					
HUD FMR	H	766	939	1279	1634
Payment Standard		804	986	1343	1716
% of Payment Standard		105%	105%	105%	105%
Wharton County:					
HUD FMR	H	571	741	920	1016
Payment Standard		599	778	966	1067
% of Payment Standard		105%	105%	105%	105%

*Note 1: FMR areas designated for Denton & Ellis County (Dallas, TX HMFA) are part of the Small Area Fair Market Rents (SAFMRS) by zip code.

Note 2: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action directing Staff to take necessary actions to make temporary assignments to one or more network Providers, to Issue Requests for Applications, or to otherwise arrange for temporary program delivery of Community Services Block Grant ("CSBG"), Comprehensive Energy Assistance Program ("CEAP"), and/or Weatherization Assistance Program ("WAP") to ensure continuity of programs in areas otherwise at risk of a hiatus in Program Delivery.

RECOMMENDED ACTION

WHEREAS, the Department is the administrator of the Community Services Block Grant ("CSBG") Program and the Low Income Home Energy Assistance Program ("LIHEAP"), both funded by the U.S. Department of Health and Human Services ("HHS"), and the Weatherization Assistance Program, funded by the U.S. Department of Energy ("DOE WAP");

WHEREAS, the Department may become aware that a service area is at risk of experiencing a temporary hiatus or permanent end to program delivery of its contracts under CSBG, LIHEAP and/or DOE WAP;

WHEREAS, the Department may desire to identify one or more entities to provide services under LIHEAP and/or DOE WAP with an effort to minimize interruption of service;

WHEREAS, the Department may become aware that a service area is at risk of a hiatus in program delivery when a Subrecipient agency Executive Board elects to relinquish voluntarily its eligible entity status under the CSBG Act;

WHEREAS, to the extent permitted under the CSBG Act and regulations the Department may desire to identify one or more entities to provide temporary CSBG services to address the contingency of an eligible entity that has voluntarily relinquished its CSBG program;

NOW, therefore, it is hereby;

RESOLVED, that staff, for and on behalf of the Department, is authorized and directed, through direct designation, contract, the release of a temporary or permanent RFA, or other lawful means, to identify and enter into agreements with one or more entities to administer any one or more of the CSBG, LIHEAP, or DOE WAP programs for the benefit of providing continued services to eligible low-income households in the service area whenever it deems such action necessary or advisable to address a possible loss of services in an area of the state under one or more these programs;

FURTHER RESOLVED, that any actions taken under this direction and authority must comply with all applicable legal and regulatory requirements including, but not limited to Department of Health and Human Services Block Grant Regulations and Chapter 2105 of the Texas Government Code;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to take such actions and execute such documents that they or any of them may deem necessary to effectuate the use of funds in this manner;

FURTHER RESOLVED, that in carrying out actions under this authority staff shall advise and consult with the Board Chair and shall bring all actions taken to this Board for ratification.

BACKGROUND

At times, the Department may become aware that a service area is at risk of experiencing a temporary hiatus or permanent end to program delivery of its contracts because of events such as a subrecipient's governing body electing to relinquish voluntarily the agency's eligible entity status under CSBG and/or its contracts under LIHEAP and/or DOE WAP, or because it is otherwise unable to provide such services. When this happens, a service area is at risk of a hiatus in program delivery. Staff responds as quickly as possible to find replacement entities to provide services, but any delay will likely result in a lapse in important services to the low income residents of the service area. With this item, staff seeks the ability, when the need is identified, to identify one or more temporary entities to administer one or more of the three programs – CEAP, CSBG, WAP - in question. This will ensure that the new provider(s) is (are) in place as quickly as possible and disruption to services is minimized.

Staff will present to the Board at the earliest subsequent Board meeting an agenda item that formalizes any actions taken – whether temporary designation of a contract, authorization to release a request for applications (RFA) to identify a permanent provider for the affected programs, or other steps taken.

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BOARD ACTION REQUEST

HOME PROGRAM DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter A, General Guidance, §23.2 Definitions; Subchapter C, Homeowner Rehabilitation Assistance, §23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements; Subchapter D, Homebuyer Assistance Program, §23.41 Homebuyer Assistance (HBA) Program Requirements and §23.42 Homebuyer Assistance (HBA) Administrative Requirements; Subchapter E, Contract for Deed Conversion Program, §23.51 Contract for Deed Conversion (CFDC) Program Requirements and §23.52 Contract for Deed Conversion (CFDC) Administrative Requirement; Subchapter F, Tenant-Based Rental Assistance Program, §23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements; and Subchapter G, Single Family Development Program §23.72 Single Family Development (SFD) Administrative Requirements, and directing that they be published for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Governing Board of the Texas Department of Housing and Community Affairs (the "Department") adopted 10 TAC Chapter 23, concerning Single Family HOME Rules on July 30, 2015, and those rules became effective on August 30, 2015; and

WHEREAS, the Department has identified certain areas in Subchapters A, C, D, E, F, and G that require further clarification and revision, and necessitate the proposal of amendments;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendments of 10 TAC Chapter 23, Single Family HOME Program, Subchapter A, General Guidance, Subchapter C, Homeowner Rehabilitation Assistance; Subchapter D, Homebuyer Assistance Program; Subchapter E, Contract for Deed Conversion Program; Subchapter F, Tenant-Based Rental Assistance Program; and Subchapter G, Single Family Development Program and directing that they be published for public comment in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The purpose of amending the State HOME Investment Partnerships Program ("HOME") Rules under Subchapter A is to define Area Median Family Income ("AMFI") and Identity of Interest. The amendments to Subchapter C, Subchapter D, Subchapter E, and Subchapter F, are to clarify and revise certain program requirements to better conform to recent changes and guidance related to state and federal laws and regulations. Revisions under each subchapter propose to strike language related to eligible sources of a HOME Administrator's Match contribution which is currently more restrictive than the requirements within the federal HOME regulations at 24 CFR Part 92, as amended on July 24, 2013, and to add language related to updated flood insurance requirements. Additional revisions under Subchapter D and revisions under Subchapter G are proposed to conform to the TILA-RESPA Integrated Disclosure Rule ("TRID"). Additional revisions under Subchapter E are proposed to conform to changes made to Title 2, Chapter 5, Subchapter D of Texas Property Code effective September 1, 2015.

Attached are the proposed preambles and the proposed amendments to sections under 10 TAC Chapter 23.

Attachment 1: Preamble and amendment of SUBCHAPTER A, DEFINITIONS

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter A, §23.2, concerning Definitions. The purpose of the proposed amendments is to define Area Median Family Income ("AMFI") and Identity of Interest in the HOME Program Rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, or is a change required by federal HOME Program requirements.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 27, 2015, to December 28, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 28, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.2 Definitions

These words when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Texas Government Code, Chapter 2306 or Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

<u>(1) Area Median Family Income-- the income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of applicants for the HOME Program, also referred to as AMFI.</u>

~~(1)~~ <u>(2)</u> CFR--Code of Federal Regulations.

~~(2)~~ (3) Commitment of Funds--Occurs when the Activity or a Project is approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

~~(3)~~ (4) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

~~(4)~~ (5) Direct Project Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs, rental and utility subsidy and deposits, and Match Funds.

~~(5)~~ (6) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

~~(6)~~ (7) Homeownership--Ownership in fee simple title in a 1 to 4 unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made).

(8) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage or adoption exists between the purchaser and the seller or lender.

~~(7)~~ (9) Match--Funds contributed to a Project that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to a Project or Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

~~(8)~~ (10) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

~~(9)~~ (11) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

~~(10)~~ (12) Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

~~(11)~~ (13) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited

liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a 10 percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

~~(12)~~ (14) Project--A single housing unit with a unique physical address. A Project may also refer to an individual Project, Development, or site.

~~(13)~~ (15) Reservation System Participant (RSP)--Administrator who has executed a written agreement with the Department that allows for participation in the Reservation System.

~~(14)~~ (16) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

~~(15)~~ (17) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of rehabilitation.

~~(16)~~ (18) Third Party--A Person who is not:

(A) an Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) an Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) a Person receiving any portion of the administration, contractor fee, or developer fee.

Attachment 2: Preamble and amendment of SUBCHAPTER C, HOMEOWNER REHABILITATION ASSISTANCE

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, §23.32, concerning Homeowner Rehabilitation Assistance ("HRA") Administrative Requirements. The purpose of the proposed amendments is to revise language to allow HOME Administrators to submit documentation of Match funds from all sources allowed by federal HOME regulations at 24 CFR Part 92, as amended on July 24, 2013 and to add language related to updated flood insurance requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, or is a change required by federal HOME Program requirements.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 27, 2015, to December 28, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 28, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (17) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Project Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) when assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction Projects;

(8) in the instance of relocation and in accordance with §23.31(a)(3) of this chapter (relating to Homeowner Rehabilitation Assistance (HRA) Program Requirements), the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Project under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) identification of any Lead-Based Paint (LBP);

(10) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(11) consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) if applicable, documentation to address or resolve any potential conflict of interest, ~~i~~Identity of ~~i~~Interest, duplication of benefit, or floodplain mitigation;

(13) a title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ninety-nine (99) year leasehold. For loan projects, the title commitment must be no older than 30 days old as of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. For assistance provided in the form of a grant agreement, a title report may be submitted in lieu of a title commitment or policy. In instances of an MHU, a Statement of Ownership and Location (SOL) must be submitted. Together, these documents must

evidence the definition of Homeownership is met;

(14) tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(15) in the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(16) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and

(17) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post rehabilitation or reconstruction value of improvements for Projects involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

(1) for construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) for construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least forty (40) days after the date of construction completion;

(3) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has ~~provided a source of Match or has~~ satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(6) the executed grant agreement or original, executed, legally enforceable loan documents and statement of

location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all Program Rules;

(8) the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Agreement in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) for costs associated with Title Policies charged as Project costs, the Title Policy must be submitted with the retainage request.

Attachment 3: Preamble and amendment of SUBCHAPTER D, HOMEBUYER ASSISTANCE PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, §23.41 Homebuyer Assistance Program Requirements and §23.42 Homebuyer Assistance Administrative Requirements. The purpose of the proposed amendments is to revise language to allow HOME Administrators to submit documentation of Match funds from all sources allowed by federal HOME regulations at 24 CFR Part 92, as amended on July 24, 2013, to conform to the TILA-RESPA Integrated Disclosure Rule ("TRID") and to add language related to updated flood insurance requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, or is a change required by federal HOME Program requirements.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 27, 2015, to December 28, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 28, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.41 Homebuyer Assistance (HBA) Program Requirements

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) The Household must complete a homebuyer counseling program/class.

(c) First lien purchase loans must comply with the requirements described in paragraphs (1) - (7) of this subsection:

(1) No adjustable rate mortgage loans or temporary interest rate buy-down loans are allowed;

(2) No first lien mortgage loans with a total loan to value equal to or greater than 100 percent are allowed;

(3) No subprime mortgage loans are allowed;

(4) For conforming mortgage loans, the debt to income ratio (back-end ratio) may not exceed 45 percent;

(5) Fees charged by third party mortgage lenders are limited to the greater of 2 percent of the mortgage loan amount or $3,500, including but not limited to origination, application, and/or underwriting fees. Fees associated with the origination of Single Family Mortgage Revenue Bond and Mortgage Credit Certificate programs will not be included in the limit. Fees paid to parties other than the first lien lender ~~and reflected on the HUD-1~~ will not be included in the limit. Fees collected by the first lien lender at closing to be paid to other parties by the first lien lender that are supported by an invoice ~~and reflected on the HUD-1~~ will not be included in the limit;

(6) No ~~i~~Identity of ~~i~~Interest relationship between the lender and the Household is allowed; and

(7) If an ~~i~~Identity of ~~i~~Interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an ~~i~~Identity of ~~i~~Interest exists between the builder and Administrator, the Administrator must provide documentation that evidences that the sales price does not provide for a profit of more than 15 percent of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(d) Direct Project Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: the lesser of $20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income; or

(2) closing costs and downpayment: the lesser of $6,000 or the total estimated settlement charges shown on the good faith estimate that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth-in-lending statement must contribute the excess funds to the total estimated settlement charges as shown on

the good faith estimate; and

(3) rehabilitation for accessibility modifications: $20,000.

(4) No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the ~~HUD-1 settlement statement~~ closing disclosure shows funds to be provided to the buyer at closing.

(5) Total assistance to the Household must be in an amount of no less than $1,000. Households who are not eligible for at least $1,000 in total homebuyer assistance are ineligible for assistance under this subchapter.

(e) Project Soft Costs are limited to:

(1) acquisition and closing costs: no more than $1,500 per housing unit; and

(2) ~~r~~Rehabilitation for accessibility modifications: $5,000 per housing unit.

(f) Funds for Administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(g) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs, excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(h) Any forgiveness of the loan must follow §23.29 of this chapter.

(i) To ensure affordability, the Department will impose the recapture provisions established in this chapter.

(j) Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule, and Chapter 21 of this title. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

§23.42 Homebuyer Assistance (HBA) Administrative Requirements

(a) Reservation of Funds. The Administrator must submit true and complete information, certified as such, with a request for the Reservation of Funds, as described in paragraphs (1) - (7) of this subsection:

(1) head of Household name;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and Soft Cost limitations are not

exceeded, and evidence that any duplication of benefit is addressed;

(3) a copy of the Household's intake application on a form prescribed by the Department;

(4) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent ~~area median family income~~AMFI, all documentation used to determine the income of the Household;

(5) if applicable, documentation to address or resolve any potential Conflict of Interest, ~~i~~Identity of ~~i~~Interest, or duplication of benefit;

(6) if applicable, construction cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion; and

(7) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Commitment of Funds. In addition to the documents required under subsection (a) of this section, the Administrator must submit the documents described in paragraphs (1) - (8) of this subsection, with a request for the Commitment of Funds within ninety (90) days of approval of the Reservation:

(1) address of housing unit for which assistance is being requested;

(2) verification of environmental clearance;

(3) identification of Lead-Based Paint (LBP);

(4) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(5) a title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(6) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(7) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction; and

(8) a good faith estimate, loan estimate or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this chapter.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in

paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are a part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) If applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) The property inspection must be signed and dated by the inspector and the Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has ~~provided a source of Match or has~~ satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for Administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for Soft Costs being paid at closing;

(9) For Activities involving Rehabilitation, include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction and until submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 4: Preamble and amendment of SUBCHAPTER E, CONTRACT FOR DEED CONVERSION PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, §23.51 Contract for Deed Conversion (CFDC) Program Requirements and §23.52 Contract for Deed Conversion (CFDC) Administrative Requirement. The purpose of the proposed amendments is to revise language to allow HOME Administrators to submit documentation of Match funds from all sources allowed by federal HOME regulations at 24 CFR Part 92, as amended on July 24, 2013, to conform to changes made to Title 2, Chapter 5, Subchapter D of Texas Property Code effective September 1, 2015, and to add language related to updated flood insurance requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, or is a change required by federal HOME Program requirements.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 27, 2015, to December 28, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 28, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.51 Contract for Deed Conversion (CFDC) Program Requirements

(a) Eligible activities are limited to: ~~the~~

(1) acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) refinance with ~~acquisition and~~ Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance;

(A) to be eligible for refinance assistance, construction costs must exceed the amount of debt that is to be refinanced.

(b) ~~A new Manufactured Housing Unit (MHU) is an eligible property type for acquisition only.~~ An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 60 percent ~~area median family income (~~AMFI~~)~~ and the Household must complete a homebuyer counseling program/class.

(d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.

(e) The Department will require a first lien position.

(f) Direct Project Costs, exclusive of Match funds, are limited to:

(1) refinance, acquisition and closing costs: $35,000. In the case of a contract for deed conversion housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of $78 per square foot or $85,000, or for Households of five or more Persons the lesser of $78 per square foot or $90,000;

(3) replacement with an energy efficient MHU: $75,000; and

(4) rehabilitation that is not Reconstruction: $40,000.

(g) In addition to the Direct Project Costs allowable under subsection (d) of this section, a sum not to exceed $5,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process; or

(2) homeowner requests for accessibility features.

(h) Project Soft Costs are limited to:

(1) acquisition and closing costs: no more than $1,500 per housing unit;

(2) Reconstruction or New Construction: no more than $9,000 per housing unit;

(3) replacement with an MHU: no more than $3,500 per housing unit; and

(4) rehabilitation that is not Reconstruction: $5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project Soft Costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

<u>(1) for refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.</u>

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet §92.25 1(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet

that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this Activity must meet the requirements of Chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.52 Contract for Deed Conversion (CFDC) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and Soft Costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(9) if applicable, documentation to address or resolve any potential Conflict of Interest, ~~i~~Identity of ~~i~~Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction;

(11) a title commitment to issue a title policy not older than thirty (30) days when submitted that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) in the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded contract for deed and a current payoff statement; and

(15) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has ~~provided a source of Match or has~~ satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents, and statement of location, as applicable, for each

assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for ~~Soft C~~costs being paid at closing;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan ~~or grant agreement, if applicable~~, and evidence of floodplain mitigation; and

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 5: Preamble and amendment of SUBCHAPTER F, TENANT-BASED RENTAL ASSISTANCE PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, §23.62, concerning Tenant-Based Rental Assistance Administrative Requirements. The purpose of the proposed amendments is to revise language to allow HOME Administrators to submit documentation of Match funds from all sources allowed by federal HOME regulations at 24 CFR Part 92, as amended on July 24, 2013.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, or is a change required by federal HOME Program requirements.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 27, 2015, to December 28, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 28, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (9) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Direct Project Costs, Project Soft Costs, administrative costs requested, Match to be provided, evidence that Direct Project Cost limitations are not exceeded, and

evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) identification of Lead-Based Paint (LBP);

(7) if applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) project address within ninety (90) days of preliminary set up approval, if applicable; and

(9) any other documentation necessary to evidence that the Project meets the Program Rules.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (8) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (8) of this subsection may be required with a request for disbursement:

(1) If required or applicable, up to 50 percent of Direct Project Costs for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Project Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has ~~provided a source of Match or has~~ satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of up to 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(5) Requests may come in up to ten (10) days in advance of the first day of the following month;

(6) For final disbursement requests, submission of documentation required for Project completion reports;

(7) Household commitment contracts may be signed after the end date of an RSP only in cases where the Department has approved a project set-up with a project address to be determined at a later time; and

(8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

Attachment 6: Preamble and amendment of SUBCHAPTER G, SINGLE FAMILY DEVELOPMENT PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter G, §23.72, concerning Single Family Development Administrative Requirements. The purpose of the proposed amendments is to revise language to conform to the TILA-RESPA Integrated Disclosure Rule ("TRID").

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, or is a change required by federal HOME Program requirements.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved regulatory guidance to enhance the efficiency and effectiveness of the HOME Program. There will not be any economic cost to any individuals required to comply with the amendments or there is an economic cost by the change required by federal HOME Program requirements.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 27, 2015, to December 28, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, HOME Division, Jennifer Molinari, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to HOME@tdhca.state.tx.us. Enter Rule Comments in the subject line. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 28, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§23.72 Single Family Development (SFD) Administrative Requirements

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (11) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) if applicable, documentation to address or resolve any potential conflict of interest, ~~i~~Identity of ~~i~~Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal, which includes post rehabilitation or reconstruction improvements for Projects involving construction; and

(11) any other documentation necessary to evidence that the Project meets the Program Rules.

(b) Loan closing. The Administrator or Developer must submit the documents described in paragraphs (1) - ~~(3)~~ (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) a title commitment to issue a title policy not older than ~~ninety (90)~~ thirty (30) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) within ninety (90) days after the loan closing date, the Administrator or Developer must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the loan closing date will result in the Department withholding payment for disbursement requests.~~; and~~

~~(3) a draft settlement statement that is consistent with the executed sales contract, the first lien mortgage~~

~~loan requirements (as applicable), and the terms of this Contract will be provided to Department.~~

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (10) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) if required or applicable, up to 50 percent of Direct Project Costs for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for costs being paid at closing;

(8) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(9) for final disbursement requests, submission of documentation required for Project completion reports; and

(10) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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BOARD ACTION REQUEST

HOME PROGRAM DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on orders repealing 10 TAC §§20.1 – 20.16, and the subsequent adoption of new 10 TAC Chapter 20 Single Family Programs Umbrella Rule, §20.1, Purpose; §20.2, Applicability; §20.3, Definitions; §20.4, Eligible Single Family Activities; §20.5, Funding Notices; §20.6, Applicant Eligibility; §20.7, Household Eligibility Requirements; §20.8, Single Family Housing Unit Eligibility Requirements; §20.9, General Administration and Program Requirements; §20.10, Inspection and Construction Requirements; §20.11, Survey Requirements; §20.12, Insurance Requirements for Acquisition Activities; §20.13, Loan, Lien and Mortgage Requirements for Activities With Acquisition; §20.14, Amendments to Agreements and Contracts and Modifications to Mortgage Loan Documents; §20.15, Compliance and Deobligation; and §20.16, Waivers and Appeals, and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, at the Board meeting on September 3, 2015, the Board approved the publication of proposed repeal of 10 TAC §§20.1 – 20.16, and publication of proposed new 10 TAC §§20.1 – 20.16 in the *Texas Register*; and

WHEREAS, the public comment period has ended and no comments were received;

NOW, therefore, it is hereby

RESOLVED, that the Governing Board hereby repeals and adopts the new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, together with preamble, in the form presented to this meeting; and

FURTHER RESOLVED that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and subsequent adoption of new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, in the forms presented to this meeting and published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The purpose of repealing 10 TAC Chapter 20, Single Family Programs Umbrella Rule and proposing a new 10 TAC Chapter 20, Single Family Programs Umbrella Rule is driven by stakeholder input and the need to codify current Department monitoring and compliance processes in current Rule. Changes were made to the entire Chapter; therefore, the Department is repealing and proposing a new Chapter instead of amending the existing Chapter.

The proposed changes to the Single Family Programs Umbrella Rule were approved in draft form at the TDHCA Board Meeting of September 3, 2015, and were published for public comment in the September 18, 2015, issue of the *Texas Register*. Public comments were accepted in writing and by fax through October 19, 2015. No comments were received and no changes are being made from the version released sent to the *Texas Register*.

Attachment A: Preamble and adoption of repeal of 10 TAC Chapter 20 Single Family Programs Umbrella Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 20, §§20.1 – §20.16, without changes to the proposed text as published in the September 3, 2015 issue of the *Texas Register* (40 TexReg 6251) and will not be republished.

REASONED JUSTIFICATION: Substantial changes within 10 TAC Chapter 20; therefore the Department determined that repeal of the existing 10 TAC Chapter 20 and adoption of a new 10 TAC Chapter 20 was appropriate. The proposed repeal of 10 TAC Chapter 20, §§20.1 – §20.16, was approved by the Board on September 3, 2015.

The Department accepted public comment between September 18, 2015 and October 19, 2015. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

§20.1. Purpose.
§20.2. Applicability.
§20.3. Definitions.
§20.4. Eligible Single Family Activities.
§20.5. Funding Notices.
§20.6. Applicant Eligibility.
§20.7. Household Eligibility Requirements.
§20.8. Single Family Housing Unit Eligibility Requirements.
§20.9. General Administration and Program Requirements.
§20.10. Inspection Requirements for Construction Activities.
§20.11. Survey Requirements for Acquisition Activities.
§20.12. Insurance Requirements for Acquisition Activities.
§20.13. Loan, Lien and Mortgage Requirements for Acquisition Activities Only.
§20.14. Amendments to Agreements and Contracts and Modification to Mortgage Loan Documents.
§20.15. Compliance and Monitoring.
§20.16. Waivers and Appeals.

Attachment B: Preamble and adoption of new 10 TAC Chapter 20 Single Family Programs Umbrella Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 20, §§20.1 – §20.16, without changes to the proposed text as published in the September 3, 2015 issue of the *Texas Register* (40 TexReg 6252).

REASONED JUSTIFICATION: Substantial changes within 10 TAC Chapter 20; therefore the Department determined that repeal of the existing 10 TAC Chapter 20 and adoption of a new 10 TAC Chapter 20 was appropriate. The proposed repeal of 10 TAC Chapter 20, §§20.1 – §20.16, and proposed new 10 TAC Chapter 20, was approved by the Board on September 3, 2015.

The Department accepted public comment between September 18, 2015 and October 19, 2015. No comments were received.

The Board approved the final order adopting the new sections on November 12, 2015.

STATUTORY AUTHORITY: The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

§20.1. Purpose

This Chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the "Department") single family Programs, which includes the Department's HOME Investment Partnerships Program (HOME), Texas Housing Trust Fund (HTF), Bond/First Time Homebuyer (FTHB), Taxable Mortgage Program (TMP), Texas Neighborhood Stabilization (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Texas Government Code, Chapter 2306 and any applicable statutes and federal regulations.

§20.2. Applicability

Unless otherwise noted, this Chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this Chapter. Where Program Rule is less restrictive than and not preempted by federal law of this Chapter, the provisions of this Chapter will control Program decisions. The Amy Young Barrier Removal Program is excluded from the Inspection and Construction Requirements identified in §20.10 and Survey Requirements in §20.11.

§20.3. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context or the NOFA indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306 and Chapter 1 of this Title (relating to Administration), and the applicable federal regulations.

(1) Activity--A form of assistance provided to a Household or Administrator by which single family funds are used for acquisition, new construction, Reconstruction, Rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other single family Department approved expenditure for single family housing.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a Community Housing Development Organization under 24 C.F.R. Part 92 ("CHDO"), Subrecipient, Developer or similar organization that has an executed written Agreement with the Department.

(3) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data.

(4) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) interlocking management or ownership;

(B) identity of interests among family members;

(C) shared facilities and equipment;

(D) common use of employees; or

(E) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(5) Affiliated Party--A person or entity with a contractual relationship with the Administrator through an Agreement with the Department.

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this Chapter.

(7) Amy Young Barrier Removal Program--Program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule or NOFA.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity who has submitted to the Department an Application for Department funds or other assistance.

(10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(11) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

(12) Chapter 2306--Texas Government Code, Chapter 2306.

(13) Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.

(14) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

(15) Conforming Mortgage Loan--A first-lien Mortgage Loan that meets Federal Housing Administration (FHA), U.S. Department of Agriculture (USDA), U.S. Department of Veterans Affairs (VA), and Fannie Mae or Freddie Mac guidelines.

(16) Contract--The executed written Agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."

(17) Contract Administrator (CA)--Same as "Administrator."

(18) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person or entity, whether through the ownership or voting securities, by contract or otherwise, including ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing member of a limited liability company or managing general partner of a limited partnership or any similar member.

(19) Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of the termination of or reduction of funds under a Contract or Agreement.

(20) Department--The Texas Department of Housing and Community Affairs as defined in Chapter 2306 of the Texas Government Code.

(21) Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.

(22) Domestic Farm Laborer--Individuals (and the family) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(23) Draw--Funds requested by the Administrator, approved by the Department and subsequently disbursed to the Administrator.

(24) Forgivable Loan--Financial assistance in the form of money that, by Agreement, is not required to be repaid if the terms of the Mortgage Loan are met.

(25) HOME Program--HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(26) Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit. May also be referred to as a "family" or "beneficiary."

(27) Housing Trust Fund (HTF)--State-funded Programs authorized under Chapter 2306 of Texas Government Code.

(28) Housing Contract System (HCS)--The electronic information system that is part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities.

(29) HUD--The United States Department of Housing and Urban Development or its successor.

(30) Life of Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

(31) Limited English Proficiency (LEP)--Requirements as issued by HUD and the Department of Justice to ensure meaningful and appropriate access to programs and activities by individuals who have a limited ability to read, write, speak or understand English.

(32) Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires Department approval.

(33) Loan to Value (LTV)--The amount of the Mortgage Loan(s) divided by the Single Family Housing Unit's appraised value, excluding Forgivable Loans.

(34) Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Texas Occupations Code, Chapter 1201 or FHA guidelines as required by the Department.

(35) Mortgage--Has the same meaning as defined in §2306.004 of the Texas Government Code.

(36) Mortgage Loan--Has the same meaning as defined in §2306.004 of the Texas Government Code.

(37) Nonconforming Mortgage Loan--Any Mortgage Loan that does not meet the definition of a "Conforming Mortgage Loan" defined in this section.

(38) Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and §1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(39) NOFA--Notice of Funding Availability.

(40) Nonprofit Organization--An organization with a current tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code, or classification as a subordinate of a nonprofit under the Internal Revenue Code.

(41) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Texas Government Code which acts as a liaison to the colonias and manages some Programs in the colonias.

(42) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(43) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities and has a record of such impairment; or is regarded as having such impairment.

(44) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(45) Program--The specific fund source from which single family funds are applied for and used.

(46) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of Single Family funds.

(47) Program Manual--A set of guidelines designed to be an implementation tool for the single family Programs which allows the Administrator to search for terms, statutes, regulations, forms and attachments. The Program Manual is developed by the Department and amended or supplemented from time-to-time.

(48) Program Rule--Chapters of this Title which pertain to specific single family Program requirements.

(49) Reconstruction--The demolition and rebuilding a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of family members living in the housing unit at the time of Application.

(50) Rehabilitation--The improvement or modification of an existing residential unit through an alteration, addition, or enhancement.

(51) Reservation--Funds set-aside for a Household Applicant or single family Activity registered in the Department's registration system.

(52) Reservation System--The Department's computer registration system(s) that allows Administrators to reserve funds for a specific Household.

(53) Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(54) Self-Help--Housing Programs that allow low, very low, and extremely low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

(55) Set-up--The creation of a new Activity in the Department database by an Administrator, which requires review and approval by the Department.

(56) Single Family Housing Unit--A home designed and built for one person or one Household for rental or owner-occupied. This includes the acquisition, construction, Reconstruction or Rehabilitation of an attached or detached unit. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

(57) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs. May also be referred to as "direct delivery" costs.

(58) Subgrantee--Same as "Administrator."

(59) Subrecipient--Same as "Administrator."

(60) TAC--Texas Administrative Code.

(61) TMCS--Texas Minimum Construction Standards as amended and described in the Miscellaneous Section of the *Texas Register*.

(62) TREC--Texas Real Estate Commission.

§20.4. Eligible Single Family Activities

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) rehabilitation, or new construction of Single Family Housing Units;

(2) reconstruction of an existing Single Family Housing Unit on the same site;

(3) replacement of existing owner-occupied housing with a new MHU;

(4) acquisition of Single Family Housing Units, including acquisition with Rehabilitation and accessibility modifications;

(5) refinance of an existing Mortgage;

(6) tenant-based rental assistance; and

(7) any other single family Activity as determined by the Department.

§20.5. Funding Notices

(a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs) or other methods for the release of funding, describing the submission and eligibility guidelines.

(b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.

(c) Funds may be subject to regional allocation in accordance with Chapter 2306.

(d) The Department will develop and publish Application materials for participation in the HCS and/or Reservation Systems.

(e) Eligible Applicants must comply with the provisions of the Application materials and NOFA and are responsible for the accuracy and timely completion and submission of all Applications and timely correction of all deficiencies.

§20.6. Applicant Eligibility

(a) Eligible Applicants may include entities such as units of local governments, Nonprofit Organizations, or other entities as further provided in the Program Rule and/or NOFA.

(b) Applicants shall be in good standing with the Department, Texas Office of the Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.

(c) Applicants shall comply with all applicable state and federal rules, statutes, or regulations including those requirements in Chapter 1 of this Title.

(d) Resolutions must be provided in accordance with the applicable Program Rule or NOFA.

(e) The violations described in paragraphs (1) - (5) of this subsection may cause an Applicant and any Applications they have submitted, to be ineligible:

(1) Applicant did not satisfy all eligibility requirements described in the Program Rule and NOFA to which they are responding;

(2) Applicant failed to make timely payment on fee commitments or on debts to the Department and for which the Department has initiated formal collection or enforcement actions;

(3) Applicant failed to comply with any other provisions of debt instruments held by the Department including, but not limited to, such provisions as timely payment of property taxes and proper placement and maintenance of insurance;

(4) Applicant is debarred by HUD or the Department; or

(5) current or previous noncompliance. Each Applicant will be reviewed for compliance history by the Department. Applications submitted by Applicants found to be in noncompliance or otherwise violating the Rules of the Department may be terminated and/or not recommended for funding.

(f) The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

(g) The Department may decline to fund any Application if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

§20.7.Household Eligibility Requirements

(a) The method used to determine Annual Income will be provided in the Program Rule or NOFA.

(b) Households must occupy the Single Family Housing Unit as their Principal Residence for a period of time as established by the Program Rule or NOFA.

§20.8. Single Family Housing Unit Eligibility Requirements

(a) A Single Family Housing Unit to be acquired or constructed with Department funds must be located in the State of Texas, and must have good and marketable title at the closing of any Mortgage Loan.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current (including prior years) or the Household must be satisfactorily participating in an approved payment plan with the taxing authority, must qualify for an approved tax deferral plan or has received a valid exemption from real property taxes.

(c) An owner-occupied Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title. The Department will require the owner to be current on any existing Mortgage Loans or home equity loans prior to assistance.

§20.9. General Administration and Program Requirements

(a) Costs incurred by Administrator for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do

not exceed charges normally allowed by the U.S. General Services Administration (GSA) per diem rates at: *http://www.gsa.gov/portal/category/21287*.

(b) Administrators must comply with all applicable local, state, and federal laws, regulations, and ordinances for procurement with single family Program funds.

(c) In addition to Chapter 1, Subchapter B of this Title, Administrators receiving Federal funds must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply.

(d) Administrators receiving Federal funds must also comply with HUD's Affirmative Fair Housing Marketing and Limited English Proficiency Requirements and the Age Discrimination Act of 1975. Administrators receiving Federal funds must also have an Affirmative Fair Housing Marketing Plan.

§20.10. Inspection Requirements for Construction Activities

(a) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit has passed all required building codes.

(2) Applicant must demonstrate compliance with Texas Government Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and other Program Rules.

(b) Reconstruction requirements.

(1) The initial inspection must identify all substandard conditions listed in TMCS along with any other health or safety concerns.

(A) The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) A copy of the initial inspection report must be provided to the Department and to the Household.

(C) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up in adequate detail to document the need for Reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for Reconstruction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must obtain and provide to the Department documentation evidencing that the Single Family Housing Unit has passed all required building codes.

(3) Applicant must demonstrate compliance with Texas Government Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and other Program Rules.

(c) Rehabilitation requirements.

(1) The initial inspection must identify all substandard conditions listed in TMCS along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up, scope of work or specifications in adequate detail to ensure that all substandard conditions are properly corrected.

(2) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected.

(3) Administrators shall meet the applicable requirements of the TMCS. TMCS requirements may be waived only through the process provided in §20.16 of this Chapter.

(d) Requirements for all construction activities.

(1) Interim inspections of construction progress may be required to document a draw request, in the Program Rule, Program Manual, or NOFA.

(2) Final inspections are required for all single family new construction, Reconstruction and Rehabilitation Activities. The inspection must document that Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no observed deficiencies related to health and safety standards.

(A) Third party certification of compliance with Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, of this Title is required as applicable.

(B) A copy of the final inspection report must be provided to the Department and to the Household.

(C) The Certificate of Occupancy may serve as the final inspection if available and acceptable in the Program Rule, Program Manual, or NOFA.

(D) All deficiencies noted on the inspector's report must be corrected prior to the final draw.

(3) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required to be corrected if acceptable to the Program as outlined in the Program Rule, Program Manual, or NOFA; or if utilizing a Self-Help construction Program.

(e) Inspector Requirements.

(1) Inspectors hired to verify compliance with this Chapter must meet Program requirements as outlined in the Program Rule, Program Manual, or NOFA, as applicable.

(2) Within city limits and extraterritorial jurisdictions, municipal code inspectors shall conduct all inspections for local code requirements as applicable.

(3) All non-municipal code inspectors shall conduct inspections using applicable construction standards prescribed by the Department.

(4) All non-municipal code inspectors shall conduct inspections using approved and prescribed inspections forms and checklists, as applicable.

(f) The Department reserves the right to reject any inspection report if, in its sole determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

(g) Single Family Housing Units participating in the Colonia Self-Help Center Program and receiving utility connections only are exempt from compliance with this Chapter.

§20.11. Survey Requirements for Acquisition Activities

(a) A survey sufficient to induce a Title Company to issue a Title Insurance policy without the standard survey exception is required for single family acquisition where the Department is a lien holder and the Program funds are used for construction or purchase because:

(1) the Rehabilitation project is enlarging the footprint; or

(2) the project is Reconstruction or new construction or purchase of an existing home.

(b) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the Owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the Title Company accepts the certification and survey.

(c) The Department reserves the right to determine the survey requirements on a per project basis if additional survey requirements would, at the sole discretion of the Department, benefit the project.

§20.12. Insurance Requirements for Acquisition Activities

(a) Title Insurance requirements. A Mortgagee's Title Insurance Policy is required for all non-conforming Department Mortgage Loans as required by the Program Rules or NOFA, exclusive of Mortgage Loans financed with mortgage revenue bonds or through the Taxable Mortgage Program. The title insurance must be written by a title insurer licensed or authorized to do business in the jurisdiction where the Single Family Housing Unit is located. The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(b) Title Reports.

(1) Title reports may be provided in lieu of title commitments only for grants when title insurance is not available. Title reports shall be required when the grant funds exceed $20,000.

(2) The preliminary title report may not be older than allowed by the Program Rule or NOFA.

(3) Liens, or any other restriction or encumbrances that impair good and marketable title must be cleared on or before closing of the Department's transaction.

(c) Builder's Risk (non-reporting form only) is required where construction funds in excess of $20,000.00 for a Single Family Housing Unit is being financed and/or advanced by the Department. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(d) Hazard Insurance.

(1) The hazard insurance provisions are not applicable to HOME Program activities unless required in the Program Rule or NOFA.

(2) If Department funds are provided in the form of a Mortgage Loan, then:

(A) the Department requires property insurance for fire and extended coverage;

(B) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(C) the amount of hazard insurance coverage at the time the Mortgage Loan is funded should be no less than 100 percent of the current insurable value of improvements; and

(D) the Department should be named as a loss payee and mortgagee on the hazard insurance policy.

(e) Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this Chapter, must be obtained prior to Mortgage Loan funding. A one year insurance policy must be paid and up to two (2) months of reserves may be collected at the closing of the Mortgage Loan. The Department must be named as loss payee on the policy.

§20.13. Loan, Lien and Mortgage Requirements for Activities with Acquisition

(a) The requirements in this section shall apply to Nonconforming Mortgage Loans for Activities with acquisition of real property, unless otherwise provided in the Program Rule, NOFA or Program guidelines.

(b) The fee requirements described in paragraphs (1) - (3) of this subsection apply to Nonconforming Mortgage Loans:

(1) Allowable expenses are restricted to reasonable third party fees.

(2) Fees charged by third party Mortgage lenders are limited to the greater of 2 percent of the Mortgage Loan amount or $3,500, including but not limited to origination, Application, and/or underwriting fees.

(3) Fees paid to other parties that are supported by an invoice and reflected on the HUD-1 will not be included in the limit.

(c) Maximum Debt Ratio. The total debt-to-income ratio may not exceed 45 percent. A borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of both the borrower and the "non-purchasing" spouse will be considered in the borrower's total debt-to-income ratio.

(d) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rule or NOFA.

(e) Lien position requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first (1st) lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least $1,000 or greater than the Department's Mortgage Loan. However liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loan, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(4) A subordinate Mortgage Loan may be re-subordinated, at the discretion of the Department, and as provided in the Program Rules or NOFA.

(f) Escrow Accounts.

(1) An escrow account must be established if:

(A) the Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) the Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account, the Department may require an escrow account to be established.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the provisions described in subparagraphs (A) - (F) of this paragraph are applicable:

(A) The borrower must contribute monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two (2) months of reserves for hazard and/or flood insurance and property taxes to be collected at the time of closing to establish the required Escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The borrower will be required to deposit monthly funds to an escrow account with the Mortgage Loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due; and

(F) These funds are included in the borrower's monthly payment to the Department or to the servicer. The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) if applicable.

(g) Requirements for Administrators and individuals originating Nonconforming loans for the Department.

(1) Any Administrator or staff member of an Administrator that is not exempt must be properly licensed as a Residential Mortgage Loan Originator.

(A) The Department reserves the right to reject any loan application originated by an Administrator or individual that is not properly licensed.

(B) The Department will not reimburse any expenses related to a rejected loan application received from an Administrator or individual that is not properly licensed.

(2) Only Administrators approved by the Department may issue Loan Estimates for loans made by the Department.

(A) The Department reserves the right to reject any Loan Application and Loan Estimate submitted by an Administrator that has not received Department approval because the loan product as disclosed is not offered or the borrower does not qualify for that loan product.

(B) The Department will not reimburse any expenses related to a Loan Estimate or Application received from an Administrator that does not have Department approval.

(3) Only Administrators approved by the Department may issue Closing Disclosures for loans made by the Department.

(A) The Department reserves the right to reject any Closing Disclosure issued by an Administrator or Title Company without Department approval.

(B) The Department reserves the right to refuse to fund a loan with a Closing Disclosure that does not have Department approval.

§20.14. Amendments and Modifications to Written Agreements and Contracts

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household Commitment Contract, provided that the requirements of this section are met.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative twelve (12) months extension to the end date of any Contract unless otherwise indicated in the Program Rules or NOFA. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative twelve (12) months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances, it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in Household. Reductions in Contractual deliverables and Households shall require an amendment to the Contract. Increases in Contractual deliverables and Households that do not shift funds, or cumulatively shift less than 10 percent of total award or Contract funds, shall be completed through an amendment to the Contract at the discretion of the Department.

(4) Increases in Award and Contract Amounts.

(A) For a specific single family Program's Contract, the Department can award a cumulative increase of funds up to the greater of 25 percent of the original award amount or $50,000.

(B) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract period.

(C) The requirements to approve an increase in funding shall include, at a minimum, Administrator's ability to continue to meet existing deadlines, benchmarks and reporting requirements.

(D) Funding may come from Program funds, Deobligated funds or Program income.

(E) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

(F) The Board must approve requests for increase in Program funds in excess of the cumulative 25 percent or $50,000 threshold.

(5) The single family Program's Director may approve Contract budget modifications provided the guidelines described in paragraphs (1) - (4) of this subsection are met:

(A) funds must be available in a budget line item;

(B) the budget change(s) are less than 10 percent of the total Contract's budget;

(C) if units or activities are desired to be increased, but funds must be shifted from another budget line item in which units or activities from that budget line item have been completed, a Contract amendment will only be necessary if the cumulative budget changes exceed 10 percent of the Contract amount; and

(D) the cumulative total of all Contract's budget modifications cannot exceed 10 percent of the total Contract's budget amount.

(E) If these guidelines are not met, an amendment to the Contract will be required.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Contract or NOFA or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

§20.15. Compliance and Monitoring

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of their Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting their obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body.

(e) Upon request, Administrators must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Administrator Response. If there are any findings of noncompliance requiring corrective action, the Administrator will be provided a thirty (30) day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three (3) business days. Failure to timely respond to a corrective action notice and/or failure to correct all findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral for administrative penalties, or other action under this Title.

(h) Monitoring Close Out. After the end of the corrective action period, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue. Results of monitoring findings may be reported to the Executive Awards and Review Advisory Committee for consideration relating to previous participation.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Administrator in noncompliance, the Administrator may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Administrators may contact an applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Administrator may request review by the Department's Compliance Committee, as set out in paragraph (l) of this subsection.

(3) Administrators may request Alternative Dispute Resolution (ADR). An Administrator may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(j) If Administrators do not respond to a monitoring letter or fail to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) Administrators must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office or others. If a finding or concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

(l) Compliance Committee.

(1) The Compliance Committee is a committee of three (3) to five (5) persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance

Divisions will not be appointed to the committee, but may be available as a resource to the Committee.

(2) Informal discussion with Compliance staff. If the Administrator has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance staff, including, as needed, the Chief of Compliance.

(3) Informal discussion with the Compliance Committee. An Administrator may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance staff did not resolve the issue.

(4) Compliance Committee Process and Timeline:

(A) At any time, the Administrator may call or request an informal conference with the Compliance staff and/or the Chief of Compliance.

(B) If a call or an informal conference with the Compliance staff does not result in a resolution of the issue, the Administrator may, within thirty (30) days of the call or informal conference with Compliance staff, request a meeting with the Compliance Committee.

(C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Administrator. An Administrator should not offer evidence, documentation, or information to the Compliance Committee that was not presented to Compliance staff during the informal staff conference. If additional information is offered, the Compliance Committee may disallow the information or refer the matter back to Compliance staff to allow review of the additional information prior to any consideration by the Compliance Committee.

(D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed in accordance with appeal rights described in Chapter 1 of this Title.

§20.16. Waivers and Appeals

(a) Appeal of Department staff decisions or actions will follow requirements in Program Rules, NOFA, and Chapter 1 or Chapter 2 of this Title, as applicable.

(b) Waiver of Texas Minimum Construction Standards.

(1) Waiver may be requested if a legal or factual reason makes compliance with provisions of TMCS impossible.

(2) Waivers must be approved prior to the commencement of Rehabilitation work.

(3) Lack of adequate initial inspection is not a valid basis for a waiver.

(4) Waiver requests must be made in writing, specifically identify the grounds for a waiver, and include all necessary documentation to support the request.

(5) Each request will be reviewed by Department staff with sufficient knowledge of the construction process to render an opinion on the validity of the request. The staff opinion will be provided to the Executive Director or his/her designee, along with the original request and the supporting documents.

(6) On or before the fourteenth business day after receipt of the request by the Department, the Executive Director or his/her designee will approve or disapprove the request, and provide written notice to the Administrator.

(7) Appeal of the Executive Director's decision will follow the Staff Appeal process provided in Chapter 1 of this Title.

2a

TDHCA Outreach Activities, October 2015

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
First Thursday Income Eligibility Training	Austin	Oct 1	Compliance	Training
Amy Young Barrier Removal Program Administrator Workshop	Fort Worth	Oct 8	Housing Trust Fund	Training
Amy Young Barrier Removal Program Administrator Workshop	Fort Worth	Oct 9	Housing Trust Fund	Training
QAP and Multifamily Rules Resource Meeting	Austin	Oct 9	Asset Management, Multifamily Finance, Real Estate Analysis	Roundtable
Southwestern Affordable Housing Management Association Conference and Trade Show	San Antonio	Oct 14	Compliance	Presentation
Austin Habitat for Humanity/ Disaster Homeowner Rehabilitation Assistance	Austin	Oct 14	HOME	Training
Austin Board of Realtors Realty Roundup	Austin	Oct 14	Homeownership	Exhibitor
Texas Interagency Council for the Homeless Meeting	Austin	Oct 14	Housing Resource Center	Host, Participant
Amy Young Barrier Removal Program Administrator Workshop	El Paso	Oct 15	Housing Trust Fund	Training
Texas Conference on Ending Homelessness/Ending Veteran Homelessness	Corpus Christi	Oct 15	Community Affairs, Housing Resource Center	Participant
Promoting Independence Advisory Committee Meeting	Austin	Oct 15	Housing Resource Center	Participant
Amy Young Barrier Removal Program Administrator Workshop	El Paso	Oct 16	Housing Trust Fund	Training
Texas Bootstrap Loan Program Workshop for Nonprofits	Dallas	Oct 20	Office of Colonia Initiatives	Training
Grand Re-Opening/Prairie Village	El Campo	Oct 20	External Affairs	Remarks, Participant
Realtor Training/Houston Association of Realtors	Houston	Oct 20	Homeownership	Training
Housing and Health Services Coordination Council Meeting	Austin	Oct 21	Housing Resource Center	Host, Participant
Disability Advisory Workgroup	Austin	Oct 21	Housing Resource Center	Host
Homebuyer Fair/Corpus Christi Association of Realtors	Corpus Christi	Oct 24	Homeownership	Exhibitor
State Independent Living Council Meeting	Austin	Oct 24-25	Housing Resource Center	Participant
Texas Bootstrap Loan Program Workshop for Nonprofits	Austin	Oct 27	Office of Colonia Initiatives	Training
TAA/Housing Tax Credit Program Training	Austin	Oct 27	Compliance	Training

Event	Location	Date	Division	Purpose
Housing and Homebuyer Fair	Port Lavaca	Oct 27	Policy & Public Affairs	Presentation
TAA/Housing Tax Credit Program Compliance Roundtable	Austin	Oct 28	Compliance	Roundtable
Housing Subcommittee Meeting/Intellectual and Developmental Disabilities System Redesign Advisory Council	Austin	Oct 28	Housing Resource Center	Participant
Texas Bootstrap Loan Program Workshop for Nonprofits	Houston	Oct 29	Office of Colonia Initiatives	Training

Internet Postings of Note, October 2015

A list of new or noteworthy documents posted to the Department's website

Texas Interagency Council for the Homeless: Homeless Veterans Study — *adding page to TDHCA's website detailing advisory committee's planned study required by Senate Bill 1580, 84thTexas Legislature, Regular Session:*
www.tdhca.state.tx.us/tich/index.htm

Draft 2016 State of Texas Consolidated Plan: One-Year Action Plan for Public Comment — *reporting on the intended use of funds received by the state from HUD for the HOME, ESG, CDBG, and HOPWA programs in Fiscal Year 2016:*
www.tdhca.state.tx.us/board/meetings.htm

Proposed Property Standards for HOME Multifamily for Public Comment — *specifying exterior construction, electrical, kitchen/bathroom, adaptable design, energy efficiency and other standards for multifamily developments funded through the Department's HOME Program:*
www.tdhca.state.tx.us/multifamily/nofas-rules.htm

2015 Emergency Solutions Grant Program: Contract Implementation Webinars for New and Returning Subrecipients — *making available recent training video presentations addressing eligible activities, match requirements, environmental requirements, monitoring process, and several other pertinent topics:*
www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm

Eligible Census Tracts: 2016 Texas Bootstrap Loan Program 2/3 Set-Aside — *detailing census tracts with a median household income not greater than 75 percent of the median state household income for eligibility purposes:*
www.tdhca.state.tx.us/oci/bootstrap.htm

List of Approved Market Analysts — *listing third-party professionals approved by the Department to provide comprehensive studies of the housing needs of low-income individuals in the area to be served by a proposed tax credit property:*
www.tdhca.state.tx.us/rea/approved-analysts.htm

2016 75-Day Deadline for Outstanding Documentation— *listing deadlines by which time developers applying for 4% Housing Tax Credits and Bond financing must submit specific documentation supporting the application:*
www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

Purchasing: No Bid Contracts —*detailing all no-bid contracts held by the Department in response to Governor Abbott's call for increased transparency with state contracts:*
www.tdhca.state.tx.us/purchasing/vendors.htm

2015 Community Services Block Grant Program: Service Providers— *listing agencies currently administering CSBG contracts by agency name, city, chief executive, primary contact, and service area:*
www.tdhca.state.tx.us/community-affairs/csbg/index.htm

2b

BOARD REPORT ITEM

BOND FINANCE DIVISION

NOVEMBER 12, 2015

Report on the Closing of the Department's 2015 Series A Single Family Mortgage Revenue Refunding Bonds and 2015 Series B Single Family Mortgage Revenue Bonds.

BACKGROUND

The financing team for this transaction included George K. Baum & Company and Kipling Jones & Co., Financial Advisors; Bracewell & Giuliani LLP, Bond Counsel; McCall, Parkhurst & Horton, L.L.P., Disclosure Counsel; Morgan Stanley, Senior Managing Underwriter; and Estrada Hinojosa & Company Inc., Ramirez & Co., Inc., and RBC Capital Markets, Co-Managing Underwriters.

Initial authorization to begin this bond issuance was granted by the Board on May 7, 2015. On September 3, 2015, the Board approved the issuance of the Department's Single Family Mortgage Revenue Refunding Bonds, 2015 Series A (Taxable) and Single Family Mortgage Revenue Bonds, 2015 Series B (collectively, the "2015 Bonds"). This issue priced October 15, 2015 and closed October 29, 2015.

Pricing Results

The Department issued $33,825,000 Single Family Mortgage Revenue Refunding Bonds, 2015 Series A (Taxable) maturing September 1, 2039, at a 3.20% fixed interest rate. These bonds refunded the Department's Single Family Variable Rate Mortgage Revenue Bonds, Series 2006H; in conjunction with this refunding, the Department terminated the 2006H Swap and the related liquidity facility provided by the Texas Comptroller of Public Accounts.

The Department issued $19,870,000 Single Family Mortgage Revenue Bonds, 2015 Series B maturing March 1, 2046, at a fixed tax-exempt interest rate of 3.125%. Proceeds of these bonds were used to assist 143 first-time homebuyers with the purchase of their first home; almost $1.1 million in down payment and closing cost assistance was provided.

2c

BOARD REPORT ITEM

HOME PROGRAM DIVISION

NOVEMBER 12, 2015

Status Report on HOME Program.

BACKGROUND

Staff is providing the Board with information on HOME Investment Partnerships Program ("HOME") activity since State Fiscal Year 2012 to provide perspective on trends of HOME fund usage. The tables on the second page of this report show Program funds (awarded and drawn) and HOME units produced, by activity type and for the program overall from State Fiscal Year 2012 through State Fiscal Year 2015.

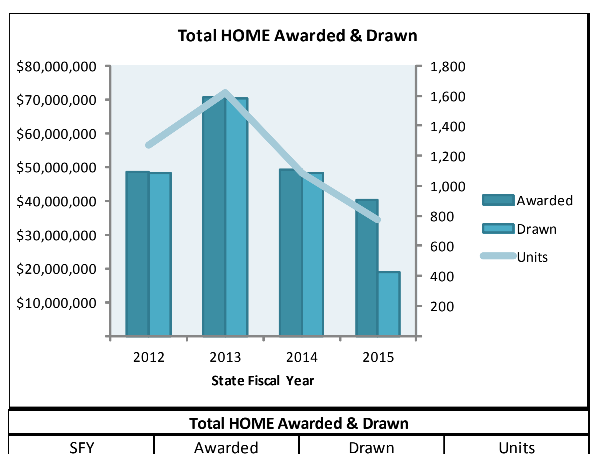
Highlights of this report include:

- The state of Texas HOME Program administered by the Texas Department of Housing and Community Affairs ("TDHCA") currently receives approximately $21 million per year, which is the third largest HOME allocation in the nation, right behind California and New York City.

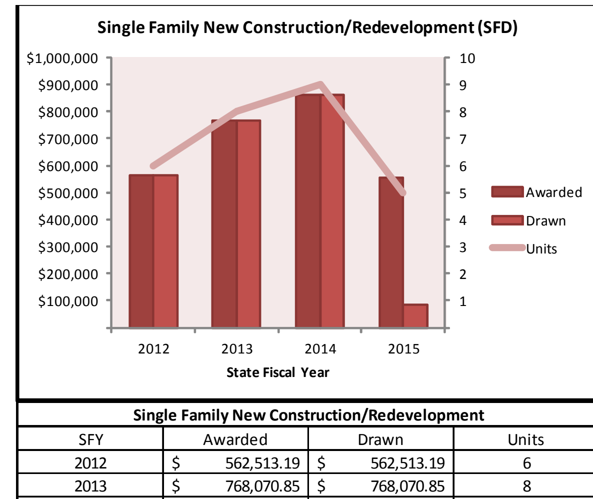
- The tables in this report reflect HOME activity that occurred within State Fiscal Years 2012 through 2015, and includes funding from annual HOME allocations, program income, and previously deobligated HOME funds. The HOME annual allocation administered by TDHCA has been steadily declining since the 2011 HOME annual allocation of approximately $40 million.

- Although the current allocation is now only approximately $21 million, TDHCA awarded slightly more than $40 million in state fiscal year 2015, an amount that is roughly equivalent to the 2011 HOME annual allocation, through the release of program income received from prior year allocations and our ability to reprogram HOME deobligated funding. The amount awarded in 2015 was less than the amount awarded in the previous three state fiscal years as a result of the declining HOME allocation.

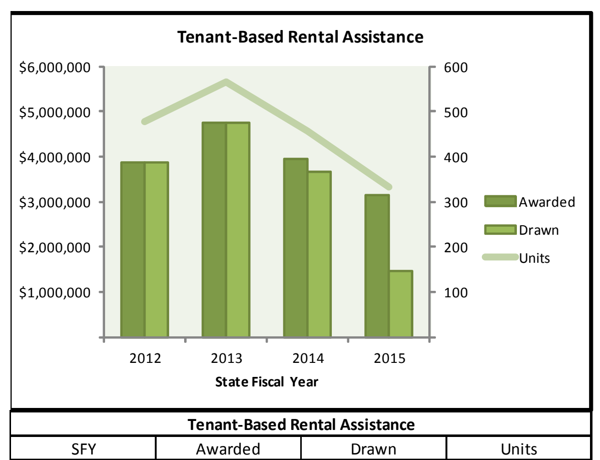
- TDHCA's flexibility to reprogram HOME funds will be limited in the coming years as a result of a change to the U.S. Department of Housing and Urban Development's ("HUD") method of grant accounting. Beginning with the 2015 HOME allocation, there is an increased possibility that HOME funds may be required to be returned to HUD for redistribution.



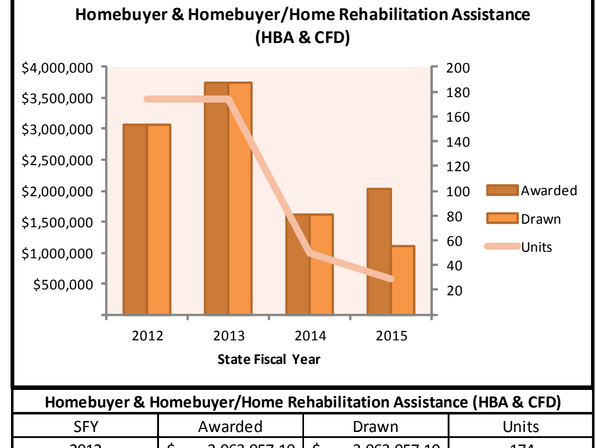
Total HOME Awarded & Drawn			
SFY	Awarded	Drawn	Units
2012	$ 48,535,226.17	$ 48,283,230.22	1269
2013	$ 70,541,572.23	$ 70,159,028.14	1619
2014	$ 49,366,977.68	$ 48,043,386.60	1086
2015	$ 40,270,823.21	$ 18,963,282.58	774



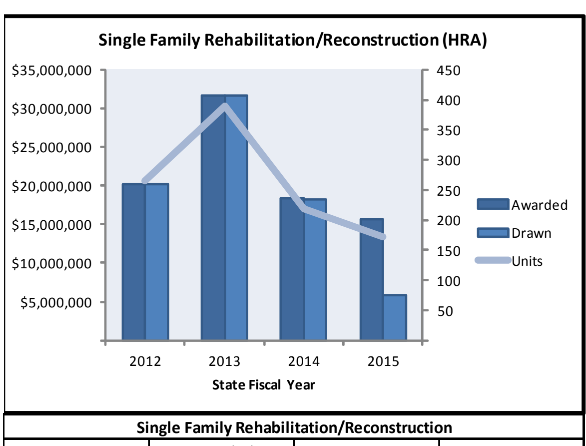
Single Family New Construction/Redevelopment			
SFY	Awarded	Drawn	Units
2012	$ 562,513.19	$ 562,513.19	6
2013	$ 768,070.85	$ 768,070.85	8
2014	$ 863,030.18	$ 863,030.18	9
2015	$ 553,135.00	$ 83,397.79	5



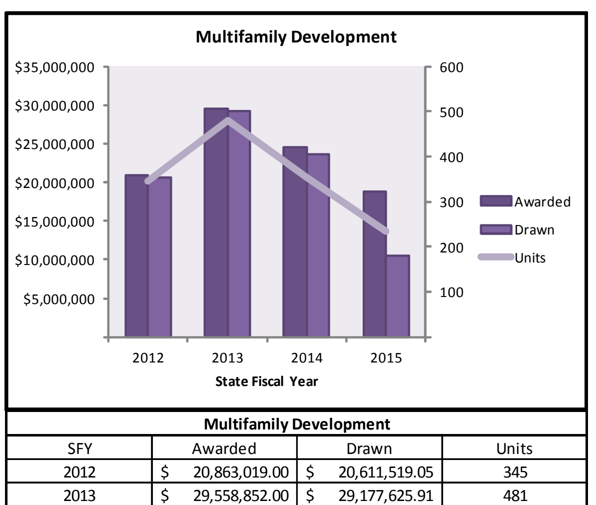
Tenant-Based Rental Assistance			
SFY	Awarded	Drawn	Units
2012	$ 3,870,331.00	$ 3,869,835.00	478
2013	$ 4,762,243.35	$ 4,760,925.35	566
2014	$ 3,956,785.44	$ 3,668,819.54	456
2015	$ 3,140,166.84	$ 1,469,973.30	333



Homebuyer & Homebuyer/Home Rehabilitation Assistance (HBA & CFD)			
SFY	Awarded	Drawn	Units
2012	$ 3,063,057.10	$ 3,063,057.10	174
2013	$ 3,741,713.79	$ 3,741,713.79	174
2014	$ 1,606,403.50	$ 1,606,403.50	50
2015	$ 2,026,579.25	$ 1,102,148.49	29



Single Family Rehabilitation/Reconstruction			
SFY	Awarded	Drawn	Units
2012	$ 20,176,305.88	$ 20,176,305.88	266
2013	$ 31,710,692.24	$ 31,710,692.24	390
2014	$ 18,404,004.56	$ 18,274,234.61	218
2015	$ 15,715,942.12	$ 5,813,046.81	172



Multifamily Development			
SFY	Awarded	Drawn	Units
2012	$ 20,863,019.00	$ 20,611,519.05	345
2013	$ 29,558,852.00	$ 29,177,625.91	481
2014	$ 24,536,754.00	$ 23,630,898.77	353
2015	$ 18,835,000.00	$ 10,494,716.19	235

2d

BOARD ACTION REQUEST

SINGLE FAMILY OPERATIONS & SERVICES

NOVEMBER 12, 2015

Report regarding the 2016-2017 Housing Trust Fund Biennial Plan.

BACKGROUND

On July 16, 2015, the Board of the Texas Department of Housing and Community Affairs adopted the 2016-2017 Housing Trust Fund ("HTF") Biennial Plan. During the Regular Session of the 84th Legislature, the Department was appropriated funding for the HTF in the amount of $12,011,476 for the 2016-2017 Biennium. The Plan described the use of funds and the balances available for each HTF program.

The Plan stated that:

> "The Department annually receives loan repayments and accrued interest that contribute to the HTF. Rider 8 of the GAA strategy A.1.3, clarifies that an estimated $2,200,000 per year in interest earnings and loan repayments are included in funds appropriated each year under the HTF.

	FY2016	FY2017	Total Biennium
Total Annual Appropriation	$5,969,488	$6,041,988	$12,011,476

> Rider 15 of the GAA requires that:
> 'Out of funds appropriated above, in Strategy A.1.3, Housing Trust Fund, the Texas Department of Housing and Community Affairs shall establish an Interagency Contract to provide 10 percent, not to exceed $4,300,110 for the 2016-17 biennium ($4,200,110 for grants and $100,000 for administration), to the appropriate fund or account with the Texas Veterans' Commission for the purpose of administering a Veterans Housing Assistance Program that will assist Texas veterans and their families in obtaining, maintaining or improving housing.' "

2016-2017 Biennial Funds for Housing Trust Fund

Use of Funds	Amount
Total Biennial Appropriation	**$12,011,476**
Less 10% for Texas Veterans Commission for a Veterans Housing Assistance Program	($1,201,148)
Less 10% Administration for TDHCA	($1,081,033)
Net Balance Available for TDHCA Programming	**$9,729,295**
Less $3M/year for Texas Bootstrap Program*	($6,000,000)
Less $1,614,647/year for Amy Young Barrier Removal Program	($3,229,295)
Less $250,000/year for Contract for Deed Conversion Assistance Grants	($500,000)
Total Remaining to be Programmed	**$0**

**Per Section 2306.7581 (a-1) of the Texas Government Code, at least $3,000,000 each state fiscal year is required.*

However, after further review, staff has realized that the figure used as the basis to calculate the 10% for the Texas Veterans Commission ("TVC") incorrectly included appropriated receipts that were placed in the HTF funding strategy for the purpose of TDHCA administrative support. Calculations for the TVC transfer should have been based strictly on General Revenue funding amounts—i.e., not including the appropriated receipts—as reflected in the General Appropriations Act for the 2016-2017 Biennium.

On October 2, 2015, the Department and the TVC proceeded with the execution of the Memorandum of Understanding that provides for the correct transfer of $1,179,250 from the Department to TVC from the 2016-2017 HTF appropriation. To ensure accuracy and consistency among documents, the Department will update the above tables for the Plan accordingly, as follows:

	FY2016	FY2017	Total Biennium
Total Annual General Revenue Appropriation	~~$5,969,488~~ $5,860,000	~~$6,041,988~~ $5,932,500	~~$12,011,476~~ $11,792,500

2016-2017 Biennial Funds for Housing Trust Fund

Use of Funds	Amount
Total General Revenue Biennial Appropriation	~~**$12,011,476**~~ **$11,792,500**
Less 10% for Texas Veterans Commission for a Veterans Housing Assistance Program	~~($1,201,148)~~ ($1,179,250)
Less 10% Administration for TDHCA	~~($1,081,033)~~ ($1,061,325)
Net Balance Available for TDHCA Programming	~~**$9,729,295**~~ **$9,551,925**
Less $3M/year for Texas Bootstrap Program*	($6,000,000)
Less ~~$1,614,647~~ $1,525,962.50/year for Amy Young Barrier Removal Program	~~($3,229,295)~~ ($3,051,925)
Less $250,000/year for Contract for Deed Conversion Assistance Grants	($500,000)
Total Remaining to be Programmed	**$0**

**Per Section 2306.7581 (a-1) of the Texas Government Code, at least $3,000,000 each state fiscal year is required.*

2e

BOARD REPORT ITEM

FAIR HOUSING, DATA MANAGEMENT, & REPORTING

NOVEMBER 12, 2015

Report on Department's Fair Housing Activities

In July 2015, the Executive Director created the Fair Housing, Data Management & Reporting ("FHDMR") Team under the direction of Brooke Boston, Deputy Executive Director. This action merged two activity areas – the Fair Housing section that had previously reported to the Chief of Staff, and the Program, Planning, Policy and Metrics Section that had reported to Ms. Boston. With staff resources combined this team is able to leverage its significant data management and reporting capacity to coordinate the Department's efforts in effectively implementing meaningful and substantive actions to affirmatively further fair housing, while continuing its many other data and reporting responsibilities. As part of the creation of the FHDMR Team, the position of a Fair Housing Project Manager was established, and Suzanne Hemphill has recently been selected as that Manager.

Below is a summary of each of the major fair housing related projects that are in various stages of research, planning, and implementation.

Fair Housing Tracking Database

Staff continues to utilize the fair housing tracking database for all activities. As you may recall each effort to affirmatively further fair housing ("AFFH") is reflected as an action step and each action step links to one or more of the Impediments identified in the 2013 Analysis of Impediments to Fair Housing Choice for the State of Texas. When first designed the database was populated with the many efforts that had already been implemented and incorporated in the Department's rules and processes. Staff's continued use reflects new and evolving efforts as the Department proceeds.

Fair Housing Work Group

Several state agencies administer federal housing funding and share fair housing responsibilities or have enforcement responsibilities. Representatives from each of the following agencies: TDHCA, Texas Department of Agriculture, Texas General Land Office, Texas Department of State Health Services, and Texas Workforce Commission, continue to meet on a regular basis to discuss fair housing issues, discuss rule and policy changes, and brainstorm new ideas to improve agency coordination and resource sharing.

Affirmatively Furthering Fair Housing Rule

On August 17, 2015, the United States Department of Housing and Urban Development ("HUD") adopted the Final Affirmatively Furthering Fair Housing Rule ("AFFH" or "the rule") which governs what block grant recipients of certain HUD funds (being those funds overseen by HUD's Division of Community Planning and Development ("CPD")) and Public Housing Authorities funded under 42 U.S.C. §1437e must do to affirmatively further fair housing and provides the tool by which they must identify those steps. Staff is prepared to meet the requirements in the final AFFH rule.

The rule replaces the Analysis of Impediments ("AI") to Fair Housing Choice with a new Assessment of Fair Housing ("AFH") tool. The AFH Tool uses HUD-generated data, and a significant community participation process, to identify four main areas:

- Racially and ethnically concentrated areas of poverty

- Patterns of integration and segregation
- Disparities in access to opportunity; and
- Disproportionate housing needs

The rule requires that Government entities that accept certain HUD funds take "meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics." HUD believes the duty to affirmatively further fair housing extends to all of the program participant's activities related to housing and community development, regardless of funding source. Meaningful actions "means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity."

The new process directly links the AFH tool and it's identified goals with the jurisdiction's HUD-required program planning document (its Consolidated Plan or for a PHA, its 5-Year PHA Plan). Fair housing goals and priorities from the AFH are expected to be incorporated into the actual programming and proposed use of the HUD funds. The AFH tool will be phased in as Government entities that are HUD program participants submit the Consolidated Plan or PHA Plan. HUD anticipates releasing the State AFH tool in the fall and the first AFH tool is due to HUD from the State of Texas in May 2019.[1] Entities must follow the current AI process until submitting an AFH.

Staff is creating informational resources related to the final AFFH rule. These documents will be added to the fair housing webpage for use by subrecipients and government entities administering HUD funds.

Fair Housing Information and Resources Website Updates
Staff is collaborating to promote fair housing webinars conducted by Texas Workforce Commission.

Internal Resource for Program Policy Considerations
Fair housing staff is involved with numerous program policy discussions. Staff analyzed the existing QAP and proposed scoring items, looking at the potential impact of opportunity index points. Staff researched and contacted HUD for clarification on providing preferences in tenant selection criteria and proper wait list maintenance.

[1] Pending release of the state AFH tool.

Action Items

3a

BOARD REPORT ITEM

INTERNAL AUDIT DIVISION

NOVEMBER 12, 2015

Report of the Meeting of the Audit Committee

REPORT ITEM

Verbal report.

BACKGROUND

3b

BOARD REPORT ITEM

ASSET MANAGEMENT

NOVEMBER 12, 2015

Report on Asset Management Issue

REPORT ITEM

Oral Presentation

4

BOARD ACTION REQUEST

INTERNAL AUDIT DIVISION

NOVEMBER 12, 2015

Presentation, Discussion and Possible Action on approval of the Fiscal Year 2016 Internal Audit Work Plan.

RECOMMENDED ACTION

WHEREAS, the Texas Government Code § 2306.073 (b), the Internal Auditing Act and audit standards require the Department's Governing Board to approve an annual audit work plan that outlines the internal audit projects planned for the fiscal year;

NOW, therefore, it is hereby

RESOLVED, the internal audit work plan for Fiscal Year 2016 is approved as presented.

BACKGROUND

The annual internal audit work plan is required by the Texas Government Code § 2306.073 (b), the Texas Internal Auditing Act (Texas Government Code Chapter 2102) and by the *International Standards for the Professional Practice of Internal Auditing* (Standards). The plan is prepared by the internal auditor based on an agency-wide risk assessment as well as input from the Department's Governing Board and executive management. The plan identifies the individual audits to be conducted during Fiscal Year 2016. The plan also outlines other planned activities that will be performed by the Internal Audit Division.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEMBERS

J. Paul Oxer, Chair

Juan S. Muñoz, PhD, Vice Chair

Leslie Bingham-Escareño

T. Tolbert Chisum

Tom H. Gann

J.B. Goodwin

EXECUTIVE MANAGEMENT

Tim Irvine
Executive Director

Beau Eccles
General Counsel

Michael Lyttle
Chief of External Affairs

David Cervantes
Chief Financial Officer

Patricia Murphy
Chief of Compliance

Tom Gouris
Deputy Executive Director
Asset Analysis and Management

Brooke Boston
Deputy Executive Director
Fair Housing, Data Management
and Reporting

Fiscal Year 2016 Annual Audit Plan
For Approval by TDHCA Board

November 12, 2015

Office of Internal Audit, P.O. Box 13941
Austin, TX 78711-3941

Fiscal Year 2016 Annual Audit Plan

Internal Audit Director

Mark E. Scott, CPA, CIA, CISA, MBA

Audit Team

M. Betsy Schwing, CPA, CGMA, CFE

Barbara K. Evans

For additional copies, please request "FY 2016 Annual Audit Plan".

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
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J.B. Goodwin

Texas Department of Housing and Community Affairs
Office of Internal Audit
Audit Plan for Fiscal Year 2016

Statutory and Professional Standards Requirement

The Texas Internal Auditing Act (Texas Government Code, §2102.005) requires state agencies to conduct a program of internal auditing. The *International Standards for the Professional Practice of Internal Auditing (IA Standards)* define Internal Auditing as an "independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes."

The Texas Government Code and the *IA Standards* require internal auditors to develop an annual audit plan, using risk assessment techniques, that identifies individual audits to be conducted during the year. The Code requires that the plan be approved by the state agency's governing board or by its administrator, if the agency has no governing board.

The program of internal auditing is carried out by the Office of Internal Audit (OIA) which serves at the direction of the Governing Board. The OIA has prepared this audit plan for consideration and approval by the Governing Board.

Development of the Annual Audit Plan

The Fiscal Year 2016 plan is designed to cover areas of highest risk to the State and the agency; however, it does not cover all risks. TDHCA management should utilize internal controls and other appropriate methodologies to mitigate residual risks not covered by the audit plan.

The annual audit plan was developed using a risk based methodology which included:

- Obtaining management's and the Governing Board's perspectives through surveys and discussions with.
- Consulting with the State Auditor's Office and other oversight bodies.

- Reviewing prior TDHCA meeting minutes, audit report findings and recommendations, and budgetary information.
- Evaluating information about key agency business areas, processes, and systems.
- Considering input from internal audit staff.
- Utilizing a matrix whereby identified auditable units were ranked according to standard risk factors.

The auditor hours available for projects in this plan were computed based on 2,088 total hours per staff member in the 2016 fiscal work year. These hours were reduced by allowances for vacation, holiday, professional development, sick leave, a temporary vacancy, and an allocation for administrative activities required to manage the program of internal auditing.

Projects for Fiscal Year 2016 Annual Audit Plan

We have identified the following projects for inclusion in the 2016 Annual Audit Plan. The project numbers are for identification purposes and may not correspond to the order in which the projects are performed. Also included below is a brief description of functions to be reviewed.

New Audit Projects:

1. Fair Housing

Fair Housing is a section of the Fair Housing, Data Management and Reporting Division of TDHCA. The Federal Fair Housing Act refers to Title VIII of the Civil Rights Act of 1968. This act, in addition to the Texas Fair Housing Act protects the right to rent an apartment, buy a home, obtain a mortgage, or purchase homeowners insurance free from discrimination based on: race, color, national origin, religion, sex, familial status, and disability.

The organizational unit of Fair Housing was selected for audit based on importance to the agency's mission and public interest, among other factors.

2. Real Estate Analysis

Real Estate Analysis is a section of the Asset Analysis and Management Division of TDHCA. The section provides the TDHCA Governing Board and staff with comprehensive analytical reports necessary to make well informed decisions for funding of affordable housing developments.

The Real Estate Analysis section rated high on the risk assessment because it has not undergone audit and because its operations are complex.

3. Compliance Monitoring

The Compliance Division ensures housing program compliance and financial compliance with federal and state regulatory mandates through established oversight and monitoring procedures. Activities include onsite monitoring visits and desk reviews.

The Compliance Division's objectives are achieved through four sections within the division: Contract Monitoring, Compliance Monitoring, Physical Inspections, and Community Affairs Monitoring.

The Compliance Monitoring section is responsible for long-term compliance with the various housing programs administered by the TDHCA. Compliance monitors in this section review necessary records to assure adherence to program requirements and terms of the deed restrictions on multifamily affordable housing properties. Compliance monitors regularly conduct site inspections to verify that the income of tenants and rents charged for housing are at or below limits established by programs such as the Housing Tax Credit, Exchange, Tax Credit Assistance Program (TCAP), HOME, Tax Exempt Bond, HTF, NSP, and Preservation programs. Monitors perform on-site and desk monitoring reviews and collect Annual Owner's Compliance Reports as required under Chapter 2306 of the Texas Government Code. Compliance Monitoring is also responsible for fair housing issues, property compliance training, and public information requests.

The Compliance section rated high on the risk assessment because of its large staff and budget, client impact, and the complexity of its operations.

4. Multifamily Finance Division

This division is responsible for administering and monitoring the Department's Multifamily Mortgage Revenue Bond issues. The Multifamily Finance Division manages all multifamily bond underwriting, analysis, and inducements for the Housing Tax Credit Program, the Multifamily Bond Program, and the Multifamily Direct Loan Program.

This organizational unit ranked high on the risk assessment because of the size of its operating budget, complexity of transactions, and the interest expressed by the legislature, governing board, and management.

5. Federal Housing Tax Credit Program

The TDHCA Housing Tax Credit (HTC) Program is one of the primary means of directing private capital toward the development and preservation of affordable rental housing for low-income households. Tax credits are awarded to eligible participants and provide a source of equity to offset a portion of their federal tax liability in exchange for the production or preservation of affordable rental housing. Investors in qualified affordable multifamily residential developments can use the HTCs as a dollar-for-dollar reduction of federal income tax liability. The value associated with the HTCs allows housing to be leased to qualified families at below market rate rents. There are two types of Tax Credits: Competitive (9%) and Non-Competitive (4%).

The 9% Housing Tax Credit is highly competitive and awarded based on a Regional Allocation Formula (RAF) with additional set asides for developments at risk of losing affordability and subsidy, developments financed through USDA, and those with nonprofit owners. Applications are scored and ranked within their region or set-aside and in accordance with rules and laws outlined in the Qualified Allocation Plan (QAP).

The Non-Competitive (4%) Housing Tax Credit program is coupled with the Multifamily Bond Program when the bonds finance at least 50% of the cost of the land and buildings in the Development. There are a variety of bond issuers in the State from which to select, with some limitations on the location of the development.

This program was selected for audit because of the high level of interest from the development community and intensive competition for the resources that the program provides.

6. Allocation of time for Governing Board and Management Requests

At the time the audit plan is developed, not all audit concerns are known or anticipated. This allocation of time enables the OIA to address concerns that come up during the course of the year.

Carry Over Projects:

Program Income

The Program Income audit will be completed in 2016. The objectives of this audit include the identification of program income and the reconciliations between the organizational units' accounting for program income to the amounts received and recoded by the finance division.

Sources and Uses of Funds

This project covers fiscal operations and other areas of the agency. In addition to providing assurance that TDHCA funds are expended in accordance with legislative intent, this audit project may add utility in that it can bring to light issues that are not directly related to the audit.

Follow-Up Audit Projects:

Federal HOME Program: Follow-up on any issue reported by the current external audit of the program will be completed in 2016.

Payroll Audit (15-004): Follow-up on implementation of the OIA recommendation is scheduled for December 2015. Notification, by the financial services manager, that the OIA recommendation has been implemented was received on September 24, 2015.

Loan Processing Audit (13-1056): Follow-up on implementation of the OIA recommendation is scheduled for December 2015. Notification, by the program services manager, that the OIA recommendation has been implemented was received on September 30, 2015.

Administrative and Statutory Projects:

- Review of TDHCA compliance with appropriation riders and other requirements of the Government Code
- Annual Audit Plan and reporting
- Annual tracking of the implementation status of prior audit recommendations

Consulting Projects and External Audit Coordination

Pursuant to the TDHCA internal audit charter, the OIA performs consulting activities for the agency. For fiscal year 2016, OIA is providing consulting services related to the new Grant Guidance in 2 CFR 200.

OIA also coordinates and advises on external audit activities.

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Mark Scott, CPA, CIA, CISA, MBA
Internal Audit Director, TDHCA

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on Resolution 16-006 Authorizing the Issuance, Sale and Delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2015 Series C (Tax-Exempt and Taxable) (the "2015C Bonds") and Single Family Mortgage Revenue Refunding Bonds, 2015 Series D (Taxable) (the "2015D Bonds"); Approving the Form and Substance of Related Documents; Authorizing the Execution of Documents and Instruments Necessary or Convenient to Carry Out the Purposes of this Resolution; and Containing Other Provisions Relating to the Subject.

RECOMMENDED ACTION

See attached resolution.

BACKGROUND

On June 28, 2006, the Texas Department of Housing and Community Affairs (the "Department") issued $59,555,000 Single Family Mortgage Revenue Refunding Bonds, 2006 Series A; $70,485,000 Single Family Mortgage Revenue Refunding Bonds, 2006 Series B; $105,410,000 Single Family Mortgage Revenue Bonds, 2006 Series C; $29,685,000 Single Family Mortgage Revenue Refunding Bonds, 2006 Series D; and $17,295,000 Single Family Mortgage Revenue Refunding Bonds, 2006 Series E (collectively, the "Series 2006 Bonds"). The Series 2006 Bonds are subject to optional redemption at par on and after March 1, 2016. As of November 1, 2015, the par amount of Series 2006 Bonds outstanding is $61,855,000, with interest rates ranging from 4.300% to 5.125%.

Staff is seeking final approval for the issuance of the 2015C Bonds and the 2015D Bonds. Please note that these series designations may change depending on when the issue is priced and closed and whether the bonds are issued on a tax-exempt or taxable basis. The Bonds may price as early as mid-December, 2015, and each of the two series may price on different dates depending on market conditions and other factors.

Staff is also seeking approval of underwriters for this transaction and recommends J.P. Morgan & Co. as the senior managing underwriter, and Morgan Stanley, RBC Capital Markets, and Ramirez & Co., Inc. as co-managers for this issuance.

Department Contribution

The maximum contribution by the Department for the 2015C and 2015D Bonds will not exceed $7,000,000, which includes the down payment assistance provided in conjunction with the loans originated. The contribution will be funded from amounts on deposit under the single family indenture and other single family-related funds. The Department contribution may be used to pay costs of issuance, the principal or interest on the Series 2006 Bonds, capitalized interest, and/or acquisition costs of the Mortgage-Backed Securities ("MBS") related to the Series 2006 Bonds.

2015C Bonds

The 2015C Bonds are expected to be fixed rate bonds and may be issued as tax-exempt bonds backed by tax-exempt eligible mortgage loans and taxable bonds backed by mortgage loans ineligible for tax-exempt financing. Proceeds will be used to purchase MBS backed by mortgage loans originated through the Single Family Taxable Mortgage Program ("TMP-79"), to pay costs of issuance of the 2015C Bonds, and may be used for other related costs. The 2015C Bonds are expected to be pass-through bonds, modified to conform to the requirements of the single family indenture. As such, the final issue size for the 2015C Bonds will be determined based on the principal amount of 2015C MBS available for purchase at closing of the 2015C Bonds. The par amount of 2015C Bonds issued will not exceed $50,000,000.

At the Board meeting of June 30, 2015, the Board approved modifications to TMP-79 and certain program documents to facilitate the use of TMP-79 as the loan origination mechanism for tax-exempt mortgage revenue bond issues. Using TMP-79 provides the Department maximum flexibility with respect to homebuyer assistance and financing options. Loans originated through TMP-79 can be securitized into MBS that can back tax-exempt or taxable bonds, or can be sold, by the Department's TBA provider, to third-party investors in accordance with the original TMP-79 structure.

2015D Bonds

The 2015D Bonds are expected to be fixed-rate, taxable bonds. Proceeds will be used to refund the Series 2006 Bonds, pay costs of issuance of the 2015D Bonds, and may be used for other related costs. The 2015D Bonds are also expected to be pass-through bonds, modified to conform to the requirements of the single family indenture. As such, the final issue size will depend on the principal amount of Series 2006 MBS projected to be outstanding as of the closing date of the 2015D Bonds. The par amount of 2015D Bonds issued will not exceed $65,000,000. Debt Service savings are expected to be no less than 5% of the principal amount of Series 2006 Bonds outstanding.

RESOLUTION NO. 16-006

RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS SINGLE FAMILY MORTGAGE REVENUE BONDS, 2015 SERIES C (TAX-EXEMPT AND TAXABLE) AND SINGLE FAMILY MORTGAGE REVENUE REFUNDING BONDS, 2015 SERIES D (TAXABLE); APPROVING THE FORM AND SUBSTANCE OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; 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 (the "Act"), as amended from time to time, for the purpose of providing for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to issue revenue bonds, to provide money to (i) make and acquire mortgage loans or participations therein, (ii) fund or increase the Department's reserves or funds (iii) pay the costs and expenses of issuing the bonds and (iv) pay interest on the bonds; and (b) to pledge all or part of the revenues, income or resources of the Department, including the revenues to be received by the Department from the mortgage loans or participations therein, to secure the payment of the principal, interest or redemption premium on the bonds; and

WHEREAS, the Act, and Chapters 1207 and 1371, Texas Government Code, as amended, further authorize the Department to issue its revenue bonds for the purpose of refunding any Department bonds or other general or special obligations; and

WHEREAS, the Department has, pursuant to and in accordance with the provisions of the Act, issued, sold and delivered its Single Family Mortgage Revenue Refunding Bonds, 2006 Series A (the "Series A Bonds"), its Single Family Mortgage Revenue Refunding Bonds, 2006 Series B (the "Series B Bonds"), its Single Family Mortgage Revenue Bonds, 2006 Series C (the "Series C Bonds"), its Single Family Mortgage Revenue Refunding Bonds, 2006 Series D (the "Series D Bonds") and its Single Family Mortgage Revenue Refunding Bonds, 2006 Series E (the "Series E Bonds," and together with the Series A Bonds, the Series B Bonds, the Series C Bonds and the Series D Bonds, the "Refunded Bonds") pursuant to the Single Family Mortgage Revenue Bond Trust Indenture dated as of October 1, 1980 (as amended and supplemented from time to time, collectively, the "Single Family Indenture") between the Department and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"); and

WHEREAS, Section 302 of the Single Family Indenture authorizes the issuance of additional Bonds for the purposes of acquiring Mortgage Loans or participations therein, payment of costs of issuance, funding of reserves, payments of certain Department expenses and refunding bonds; and

WHEREAS, the Governing Board has determined to authorize the issuance of the Department's Single Family Mortgage Revenue Bonds, to be known as its Single Family Mortgage Revenue Bonds, 2015 Series C (Tax-Exempt and Taxable) (the "2015 Series C Bonds") pursuant to the Single Family Indenture for the purpose of providing funds to make and acquire qualifying mortgage loans through the purchase of mortgage backed securities ("Mortgage Certificates"), to fund capitalized interest and to pay a portion of the costs of issuance; and

WHEREAS, the Governing Board has determined to authorize the issuance of the Department's Single Family Mortgage Revenue Bonds, to be known as its Single Family Mortgage Revenue Refunding Bonds, 2015 Series D (Taxable) (the "2015 Series D Bonds") pursuant to the Single Family Indenture for the purpose of providing funds to refund the outstanding Refunded Bonds and pay a portion of the costs of issuance (the 2015 Series C Bonds and the 2015 Series D Bonds are referred to herein collectively as the "Bonds"); and

WHEREAS, the Governing Board desires to authorize the execution and delivery of the Sixtieth Supplemental Single Family Mortgage Revenue Bond Trust Indenture (the "Sixtieth Series Supplement") in substantially the form attached hereto relating to the 2015 Series C Bonds; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of the Sixty-First Supplemental Single Family Mortgage Revenue Bond Trust Indenture (the "Sixty-First Series Supplement") in substantially the form attached hereto relating to the 2015 Series D Bonds (the Sixtieth Series Supplement and the Sixty-First Series Supplement are referred to herein collectively as the "Supplemental Indentures"); and

WHEREAS, the Governing Board has further determined that the Department should enter into a Bond Purchase Agreement relating to the sale of the Bonds (the "Bond Purchase Agreement") with J.P. Morgan & Co., as representative of the group of underwriters listed in the Bond Purchase Agreement (the "Underwriters"), in substantially the form attached hereto setting forth certain terms and conditions upon which the Underwriters will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriters; and

WHEREAS, the Governing Board has determined to authorize the execution and delivery of a 2015 C/D Supplement to Depository Agreement relating to the Bonds (the "Depository Agreement"), by and among the Department, the Trustee and the Texas Treasury Safekeeping Trust Company, in substantially the form attached hereto to provide for the holding, administering and investing of certain moneys and securities relating to the Bonds; and

WHEREAS, the Governing Board has been presented with a draft of a preliminary official statement to be used in the public offering of the Bonds (the "Official Statement") and the Governing Board desires to approve such Official Statement in substantially the form attached hereto; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") in substantially the form attached hereto between the Department and the Trustee; and

WHEREAS, the Governing Board has determined to authorize the investment of the proceeds of the Bonds and any other amounts held under the Single Family Indenture with respect to the Bonds on or after the closing date or such other investments as the authorized representatives named herein may approve; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed $7,000,000 of Department funds for any purpose authorized under the Act and the Single Family Indenture, including to provide funds for the refunding of the Refunded Bonds, to pay a portion of the costs of issuance of the Bonds, to provide funds for the acquisition of Mortgage Certificates and to fund capitalized interest; and

WHEREAS, Chapter 1371, Texas Government Code and Chapter 1207, Texas Government Code, as amended, authorize the Department to take other actions described in this resolution related to issuance of the Bonds; and

WHEREAS, the Governing Board desires to approve the forms of the Supplemental Indentures, the Bond Purchase Agreement, the Depository Agreement, the Official Statement, and the Continuing Disclosure Agreement in order to find 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 to further its programs in accordance with such documents by authorizing 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 to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1
ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of either or both series of Bonds in one or more series or subseries and on a taxable or tax-exempt basis is hereby authorized, all under and in accordance with the Single Family Indenture, and that, upon execution and delivery of the Supplemental Indentures, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of Texas (the "Attorney General") for approval, the Comptroller of Public Accounts of the State of Texas (the "Comptroller") for registration and the Trustee for authentication, and thereafter to deliver the Bonds to or upon the order of the Underwriters.

Section 1.2 Authority to Approve Form of Documents, Determine Interest Rates, Principal Amounts, Maturities and Prices. That the Authorized Representatives of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, as amended, to fix and determine the interest rates, principal amounts and maturities of, and the prices at which the Department will sell the Bonds to the Underwriters, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Bond Purchase Agreement; provided, however, that: (a) the interest rate on each series of Bonds shall not exceed 4.5% per annum; (b) the aggregate principal amount of the 2015 Series C Bonds shall not exceed $50,000,000; (c) the aggregate principal amount of the 2015 Series D Bonds shall not exceed $65,000,000; (d) the final maturity of the 2015 Series C Bonds shall occur not later than September 1, 2046; (e) the final maturity of the 2015 Series D Bonds shall occur not later than September 1, 2039; (f) the price at which the 2015 Series C Bonds are sold to the Underwriters shall not exceed 103% of the principal amount thereof; (g) the price at which the 2015 Series D Bonds are sold to the Underwriters shall not exceed 103% of the principal amount thereof; and (h) the Bonds shall be rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term debt instrument. In no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law.

Section 1.3 Authority to Select Refunded Bonds. That the Authorized Representatives are hereby authorized and empowered in accordance with Section 1207.007, Texas Government Code, as amended, to select any specific maturities or series of the Refunding Bonds to be refunded and establish the terms of the 2015 Series D Bonds as provided in Section 1207.007 Texas Government Code provided that the aggregate amount of payments to be made under the 2015 Series D Bonds is less than the aggregate amount of payments that would have been made under the terms of the selected Refunded Bonds; and

Section 1.4 Approval, Execution and Delivery of the Supplemental Indentures. That the form and substance of the Supplemental Indentures are hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to Supplemental Indentures, and to deliver the Supplemental Indentures to the Trustee.

Section 1.5 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriters pursuant to the Bond Purchase Agreement is hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Underwriters.

Section 1.6 Official Statement. That the Official Statement relating to the Bonds, in substantially the form presented to the Governing Board, is hereby approved; that prior to the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Governing Board, are hereby authorized and directed to finalize the Official Statement for distribution by the Underwriters to prospective purchasers of the Bonds, with such changes therein as the Authorized Representatives may approve in order to permit such an Authorized Representative, for and on behalf of the Governing Board, to deem the Official Statement relating to the Bonds final as of its date, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), such approval to be conclusively evidenced by the distribution of such Official Statement; and that within seven business days after the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf

of the Governing Board, shall cause the final Official Statement, in substantially the form of the Official Statement attached hereto, with such changes as such an Authorized Representative may approve, such approval to be conclusively evidenced by such Authorized Representative's execution thereof, to be provided to the Underwriters in compliance with Rule 15c2-12.

Section 1.7 Approval of Depository Agreement. That the form and substance of the Depository Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Depository Agreement and to deliver the Depository Agreement to the Trustee and to the Texas Treasury Safekeeping Trust Company.

Section 1.8 Approval of Continuing Disclosure Agreement. That the form and substance of the Continuing Disclosure Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Continuing Disclosure Agreement and to deliver the Continuing Disclosure Agreement to the Trustee.

Section 1.9 Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, 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 may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Single Family Indenture, the Supplemental Indentures, the Bond Purchase Agreement, the Depository Agreement, and the Continuing Disclosure Agreement.

Section 1.10 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized 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 in the opinion of Bracewell & Giuliani LLP, 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.

Section 1.11 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 A – Sixtieth Series Supplement
Exhibit B – Sixty-First Series Supplement
Exhibit C – Bond Purchase Agreement
Exhibit D – Official Statement
Exhibit E – Depository Agreement
Exhibit F – Continuing Disclosure Agreement

Section 1.12 Authorized Representatives. The following persons and each of them are 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 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief Financial Officer of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Persons is authorized to act individually as set forth in this Resolution.

Section 1.13 Department Contribution. That the contribution of Department funds in an amount not to exceed $7,000,000 to be used for any purpose authorized under the Act and the Single Family Indenture, including to provide funds for the refunding of the Refunded Bonds, to pay a portion of the costs of issuance of

the Bonds, to provide funds for the acquisition cost of Mortgage Certificates and to fund capitalized interest is hereby authorized.

ARTICLE 2
APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Submission to the Attorney General of Texas. That the Governing Board hereby approves the submission by the Department's Bond Counsel to the Attorney General of Texas, for his approval, of a transcript of the legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.2 Engagement of Other Professionals. That the Executive Director or the Director of Bond Finance is authorized to engage an accounting firm to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of the purchasers of the Bonds and Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.3 Certification of the Minutes and Records. That the Secretary and any Assistant Secretary to the Governing Board are hereby authorized to certify and authenticate minutes and other records on behalf of the Department for its single family mortgage revenue bond program, the issuance of the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agencies. That the Executive Director, the Director of Bond Finance and the Department's consultants are authorized to seek ratings from Moody's Investors Service, Inc. and Standard & Poor's Ratings Services, a Standard & Poor's Financial Service LLC business.

Section 2.5 Ratifying Other Actions. That all other actions taken or to be taken by the Executive Director and the Department's staff in connection with the issuance of the Bonds and refunding of the Refunded Bonds are hereby ratified and confirmed.

Section 2.6 Authorized to Invest Funds. Pursuant to Section 1371.102 and the Act, that the Executive Director or the Director of Bond Finance is hereby authorized to undertake all appropriate actions required under the Single Family Indenture and the Depository Agreement and to provide for investment and reinvestment of all funds held under the Single Family Indenture in accordance with the Single Family Indenture.

Section 2.7 Redemption of Refunded Bonds. That the Executive Director or the Director of Bond Finance is hereby authorized and directed: (i) to instruct the Trustee to give notice of redemption and to redeem the outstanding Refunded Bonds with the proceeds of the 2015 Series D Bonds, and (ii) to take all other actions necessary to cause such redemption and refunding to occur.

Section 2.8 Waiver from Texas Bond Review Board. That the Governing Board of the Department authorizes the Authorized Representatives to seek a waiver from the Texas Bond Review Board of the requirements of Section 2306.142(1) of the Act in accordance with Section 2306.142(m) of the Act.

ARTICLE 3
CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Purpose of Bonds. That the Governing Board hereby determines that the purpose for which the Department may issue the Bonds constitutes "public works" as contemplated by Chapter 1371, Texas Government Code, as amended.

ARTICLE 4
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 pledged under the Single Family Indenture to secure payment of the bonds issued under the Single Family Indenture and payment of the Department's costs and expenses for its single family mortgage revenue bond program thereunder and under the Single Family Indenture, 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 or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State.

Section 4.3 Purposes of Resolution. That the Governing Board has expressly determined and hereby confirms that the issuance of the Bonds and the furtherance of the purposes contemplated by this Resolution accomplish a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 4.5 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 12th day of November, 2015.

____

Chair, Governing Board

ATTEST:

____

Secretary to the Governing Board

(SEAL)

EXHIBITS

ALL DOCUMENTS REFERRED TO IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL COPY OF SAID RESOLUTION, WHICH IS ON FILE IN THE OFFICIAL RECORDS OF THE DEPARTMENT, AND EXECUTED COUNTERPARTS OF SUCH EXHIBITS ARE INCLUDED IN THE OFFICIAL TRANSCRIPT OF PROCEEDINGS RELATING TO THE BONDS.

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* of the 2016-1 Multifamily Direct Loan Notice of Funding Availability.

RECOMMENDED ACTION

WHEREAS, a report item on the development of the proposed Notice of Funding Availability ("NOFA") (originally described as the 2015-2 Multifamily Direct Loan NOFA or the "2015-2 NOFA" herein being renamed and now known as the 2016-1 Multifamily Direct Loan Notice of Funding Availability or the "2016-1 NOFA") was presented at the previous Board meeting;

WHEREAS, the Department has received public comment from a variety of interested parties regarding their recommendations for set-asides, priorities, and funding restrictions within the expected NOFA;

WHEREAS, the Department has $4.25 million in Tax Credit Assistance Program loan repayments ("TCAP Repayment Funds or TCAP RF") remaining from the previous NOFA and approximately $7 million in additional undedicated TCAP Repayment Funds available as of the end of state fiscal year 2015;

WHEREAS, the Department has approximately $11,859,096 available in HOME funds as a result of HOME program income, de-obligated HOME awards and 2015 Grant Year funds programmed through the Annual Plan for multifamily development including $3,236,344 million in HOME Community Housing Development Organization ("CHDO") funds;

WHEREAS, the staff recommends prioritizing all of these available funds in this 2016-1 NOFA in a manner that is conducive to accelerated commitment and expenditure of funds in order to meet new commitment and expenditure deadlines established by HUD which may include substituting current grant year funds for program income funds;

WHEREAS, the Department anticipates making awards under this NOFA from February 2016 through July 2016.

NOW, therefore, it is hereby

RESOLVED, that $11,250,000 in TCAP Repayment Funds, $8,622,752 million in HOME general funds and $3,236,344 million in CHDO funds, for a total of $23,109,096, along with any additional returned awards from the 2015-1 NOFA be made available for Applicants through this 2016-1 NOFA;

FURTHER RESOLVED, that funds made available through this 2016-1 NOFA will ensure that the Department awards an appropriate amount of HOME funds to CHDOs in

order to satisfy its obligation to HUD and will prioritize applications that both meet all 2016-1 NOFA requirements and are in the best position to move forward swiftly and prudently; and

FURTHER RESOLVED, the Executive Director and staff as designated by the Executive Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

On February 6, 2015, the 2015-1 HOME/TCAP Multifamily Development Notice of Funding Availability (2015-1 NOFA) was published, announcing the availability of up to $20 million – $14 million in HOME funds and $6 million in TCAP RF – for the development of affordable multifamily rental housing. In July the Department awarded 15 applications under the NOFA a total of $17,091,000, of which $8.55 million was awarded under the CHDO set-aside, $6,791,000 was awarded under the HOME General set-aside, and $1.75 million was awarded with TCAP RF. The combined CHDO and General awards from HOME totaled $15,341,000, which was $1,341,000 beyond the $14 million originally anticipated from HOME sources in the 2015-1 NOFA. The $1,341,000 overage was filled with HOME program income and prior year allocations. Therefore, there are $4,250,000 in TCAP RF remaining from the 2015-1 NOFA that can be made available under the 2016-1 NOFA.

In addition to the $4,250,000 of available TCAP RF, staff is programming approximately $7 million in TCAP RF, for a total of $11,250,000 in TCAP RF that will be available in the 2016-1 NOFA. Through September 2015, the interest portion of loan repayments from loans made during the American Recovery and Reinvestment Act through TCAP has totaled approximately $7.7 million. In order to maintain the ability to always reuse the principal of these loan repayments, staff has proposed to limit the grant or forgivable portions of TCAP RF to the interest portion of loan repayments and that TCAP RF funded awards be repayable, thereby preserving this funding source. The Board previously approved and the Department has utilized $5.3 million in TCAP RF to repay HUD and our HOME accounts for developments that failed to deliver the required affordability. Therefore staff is proposing that up to $3 million of the proposed TCAP RF funds available in the 2016-1 NOFA be in the form of deferred forgivable loans for applicants proposing multifamily rental housing that meets the requirements outlined in the Deferred Forgivable Loan set-aside serving households at 30% or below the area median income. Up to $4 million in TCAP RF will be available in the 4% Housing Tax Credit ("HTC") layered set-aside, and the remaining balance will be available under the General set-aside.

$11,859,096 in HOME funds will be available in the 2016-1 NOFA. Of that amount, $3,236,344 represents the minimum amount required to be committed to CHDO activities under the 2015 Grant Year allocation. The remaining $8,622,751 will be available under the General set-aside, but may be awarded to CHDO activities as well to the extent that there are remaining CHDO applications after addressing non-CHDO applications. Some of the $8,622,751 may also be awarded under the Deferred Forgivable Loan set-aside or 4% HTC layered set-aside in lieu of TCAP RF to the extent that applications with development sites in non-Participating Jurisdictions are awarded.

Staff received significant public input regarding both the NOFA and the Deferred Forgivable Loan set-aside at the previous two Board meetings and via email. Most of the public comment regarding the NOFA included requests to allow previously awarded applications to apply for Multifamily Direct Loan funds,

requests to increase the per unit subsidy limit, and requests to allow an interest rate lower than 3.0% on Multifamily Direct Loan funds. Staff believes all three requests are being accommodated in this 2016-1 NOFA. With regard to allowing previously awarded applications to apply for Multifamily Direct Loan funds, the 2016-1 NOFA does not include any prohibition on applicants who have previously received an award of Department assistance, beyond what is found in the federal HOME rule, since the efficient commitment and expenditure of funds is a top priority for the Department. With regard to increasing the per unit subsidy limit, the 2016-1 NOFA includes increased maximum per unit subsidy limits while making lower per unit subsidy limits a scoring item; in other words, applicants will have the choice of abiding by the maximum limits or using the lower limits in order to score points and make their applications more competitive. Finally, the 2016-1 NOFA includes flexibility in terms of how the Multifamily Direct Loan funds may be structured: applicants under the Deferred Forgivable Loan set-aside can request the funds as a deferred forgivable loan while applicants under all other set-asides will be required to request the funds as a fully repayable loan at a minimum 3.0% interest and amortized over 30 years. For the repayable loans, staff believes that the combination of no interest payments due during the construction period (24 months from time of loan closing) and the fact that 3.0% interest rate over the permanent period is less than the current market rate of 4.5% to 6.0% on permanent first lien debt, much less the higher rate that would be attributed to 2nd line mezzanine debt, along with the Board directive with the institution of the TCAP awards to make repayable loans and the Department's direction to maintain a vibrant fund, justifies the minimum interest rate and amortization. Also, the Department's Multifamily Direct Loans have (more than 90% of loans awarded over the past four years) been in a second lien position which should command a higher interest rate than first lien mortgagees require, as the Department is effectively serving as a mezzanine debt provider. Nonetheless, the Board shall have the ability to adjust the interest rate and term as market conditions change through amendments to this NOFA and/or on an individual basis through a waiver of this requirement when needed and on a case by case basis.

Most of the public comment received regarding the Deferred Forgivable Loan set-aside was received through the Supportive Housing committee meetings that preceded the September and October Board meetings. The committee heard from numerous stakeholders within the development community, advocates for the homeless, and advocates for persons with disabilities. One comment that was echoed by many was that the Department's definition of Supportive Housing in the Uniform Multifamily Rules was sufficient for the purpose of creating a set-aside from which to award deferred forgivable loans. Another comment that had several supporters was the proposed eligibility of developments that may only have a minority of the units within a development targeted for extremely low income households. However, those extremely low income units would only be able to exist through a deferred forgivable loan; in other words, project-based rental assistance, tenant-based vouchers, and any other income-restricting source of funds would not be able to have a claim on those extremely low income units. These ideas are included in the 2016-1 NOFA.

All funds in the 2016-1 NOFA will be subject to the Regional Allocation Formula ("RAF") initially within each set-aside and then available on a statewide basis within each set-aside. Applications will be considered for award on a first-come, first-serve basis within three priorities; however, all applications layered with Competitive (9%) HTCs will be considered to be received on the same date and prioritized in a manner that favors applications that will be able to close on all financing by July 29, 2016. Staff believes an accelerated closing requirement for developments with 9% HTC, combined with a set-aside specifically for ready-to-go Private Activity Bond layered 4% HTC applications, will help the Department meets it commitment and expenditure deadlines. After May 31, 2016, should there be any funds remaining, set-asides will no longer be considered and any eligible applications will be awarded in accordance with date(s) they were received and scoring criteria, if applicable.

Applicants for funds under the Deferred Forgivable Loan set-aside will be required to comply with the specific HOME program restrictions that allow the Department to be able to count the full value of the deferred forgivable loans as Match in accordance with 24 CFR §92.220. Staff also recommends that only Applicants within Participating Jurisdictions, areas of the state where applicants are generally precluded from utilizing Department HOME funds, be eligible to apply for TCAP funds. However, the NOFA will be structured so that staff has the flexibility to award TCAP funds to Applications originally requesting HOME funds in the event that there is there are not enough HOME funds available to fund Applications in non-Participating Jurisdictions.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2016-1 NOTICE OF FUNDING AVAILABILITY (NOFA)

1) **Summary.** The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to **$23,109,096** in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds are subject to 10 TAC Chapters 1 ("Administration"), 2 ("Enforcement"), and 10 ("Uniform Multifamily Rules"), and Chapter 2306 of the Texas Government Code. Applications will be subject to the Department of Housing and Urban Development ("HUD'') HOME regulations governing the HOME program found at 24 CFR Part 92 ("HOME Final Rule"). Other Federal regulations that apply to HOME funds include, but are not limited to fair housing (42 U.S.C. 3601-3619), environmental requirements (42 U.S.C. 4321; and 24 CFR part 50 or part 58 depending on the type of activity), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Section 104(d) of Housing and Community Development Act of 1974, and Davis-Bacon and Related Labor Acts for labor standards (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs). HOME-funded developments must comply with HUD Section 3 requirements (24 CFR Part 135). Section 3 requires HOME funded housing and community development activities to give, to the greatest extent feasible (and consistent with existing Federal, State and local laws and regulations) job training, employment, contracting and other economic opportunities to Section 3 residents and business concerns.

   All Applicants, but particularly Applicants with Development Sites located outside Participating Jurisdictions, should assume that HOME funds will be awarded and should likewise be prepared to comply with the applicable regulations. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

2) **Sources of Multifamily Direct Loan Funds.** Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior HOME allocations, the 2015 Grant Year HOME allocation, and loan repayments from the Tax Credit Assistance Program ("TCAP Repayment funds" or "TCAP RF"). The Department may amend this NOFA or the Department may release a new

NOFA upon receiving its 2016 HOME allocation from HUD or additional TCAP loan repayments. These funds have been programmed for multifamily activities including acquisition and/or refinance of affordable housing involving new construction or rehabilitation.

3) **Set-Asides.** All funds will be subject to the Regional Allocation Formula ("RAF", located in Attachment A) until January 29, 2016, and then available on a statewide basis within each set-aside until June 1, 2016, at which time any remaining funds which have not been requested in the form of an application responsive to this NOFA will be available on a statewide basis regardless of set-aside. Applications under any and all set-asides may or may not be layered with 9% or 4% Housing Tax Credits ("HTC"). The funds made available under this NOFA are available under four set-asides:

Set-Aside	Amount
CHDO	$3,236,344
Deferred Forgivable Loan	$3,000,000
4% HTC Layered New Construction	$4,000,000
General	$12,872,752

a. **CHDO Set-Aside.** At least **$3,236,344** in HOME funds are set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this NOFA. Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions.

b. **Deferred Forgivable Loan Set-Aside.** Funds under this set-aside are intended to increase the number of 30% rent-restricted units and occupy them with households with an annual income of 30% Area Median Income ("AMI") or less who are not currently receiving any type of rental assistance. To achieve that goal, up to **$3,000,000** in TCAP Repayment and/or HOME funds are set aside for applications that meet the underwriting requirements in Subchapter D of the 2016 Uniform Multifamily Rules (the "Underwriting and Loan Policy") and:

   i. The definition of Supportive Housing in 10 TAC §10.3(a) in the 2016 Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing developments Section 10.302(g)(3) of the Underwriting and Loan Policy, *or*

   ii. The requirements below in A-D:

      A) All units assisted with HOME/TCAP RF must be leased to households earning 30% AMI or less as defined in 10 TAC §10.1005 and have rents no higher than the 30% rent limits published by the Department.

      B) No units assisted with HOME/TCAP RF may also be receiving project-based rental assistance.

      C) All floating units assisted with HOME/TCAP RF may not have tenants with tenant-based voucher or rental assistance except if there are no available units within the development that the voucher-holder may occupy. This criteria does not apply for fixed HOME/TCAP units.

D) All units assisted with HOME/TCAP RF may not have any other income or rent restrictions as a result of another income or rent restricting source of funds to the 30% level or below (e.g., 9% HTC units restricted to households earning and with rents not exceeding 30% of the AMI).

c. **4% HTC Layered Set-Aside.** At least **$4,000,000** in TCAP RF and/or HOME funds are set aside for applications layered with 4% HTC that are proposing new construction and do not qualify under the CHDO or Deferred Forgivable Loan Set-Asides. This set-aside will be available under at least $4,000,000 in funds under this set-aside are awarded or until May 31, 2016, whichever occurs first.

d. **General Set-Aside.** All remaining TCAP Repayment and HOME funds available (currently anticipated to be approximately $12,872,752).

4) Priorities for Awards

Awards will be made subject to hard closing deadlines established at the time of award by the Department's Governing Board and which can only be extended by additional Board action on the basis of evidence of delays caused by circumstances outside the control of the applicant or non-HUD or non-USDA lender. When determining the date an application is received, staff will only assign a date that corresponds with a business day and will not assign a time. Applications received after 5pm Austin Local Time will be determined to have been received on the following business day. Applications will be determined to have been received at the time all required third party reports and application fee(s), in addition to the application, are submitted to the Department. Applications that are unable to progress on the timelines described herin due to incomplete information or lack of responsiveness will be given notice and a five day period to cure the incomplete information or non-responsiveness. Failure to cure the notice will result in a reestablishment of the application submission date to the date at which the cure to the notice was provided. As such, an applicant could be de-prioritized in favor of another application received prior to the new application submission date. **All Applications layered with 2016 Competitive (9%) HTCs will be considered to have been received not earlier than April 1, 2016, but must be provided to the Department as part of their 2016 Competitive (9%) HTC application.** Applications will be prioritized for an award as described below to the extent that funds remain available.

a. Any complete applications received during the period of the RAF will be prioritized to the extent that funds are available both in the region and in the set-aside under which the application is received. If multiple applications are received in a region, then score will be used as the determining factor affecting the priority of the application. If insufficient funds exist in a region to fund all applications then the oversubscribed applications will wait for the collapse of funds by region be combined with other applications received by the deadlines and as described by the additional priority levels below.

b. **Priority 1**: Applications not layered with 2016 9% HTC that are received by March 31, 2016. Priority 1 applications will be prioritized on a first come first served basis. Awards of Priority 1 applications are anticipated to be recommended for approval by or before the Board meeting on May 26, 2016.

c. **Priority 2**: Applications layered with 2016 9% HTC will be further prioritized based on being recommended for a 2016 HTC allocation. All Priority 2 applications will receive an April 1, 2016, received date. Awards of Priority 2 applications are anticipated to be

recommended for approval at the Board meeting on July 28, 2016. Applications that will be recommended for HTC and remain tied for HOME/TCAP RF under the scoring criteria below will be further prioritized for funding based upon the scoring and award criteria in 10 TAC Chapter 11 (the "QAP").

d. **Priority 3**: Applications that are received between April 2, 2016 and May 31, 2016. Awards of Priority 3 applications are anticipated to be recommended for approval no later than the Board meeting on September 8, 2016.

5) **Scoring Criteria.** Applications will be scored based on the scoring criteria below to the extent that other applications were received on the same date *and* within the same set-aside and prioritization based on information as of the Application submission date.

a. All applications will have the opportunity to score points in i. through iv., below:

i. Eligibility for points under 10 TAC §11.9(c)(4) related to the Opportunity Index based on the scale provided in 10 TAC §11.9(c)(4), for a maximum of seven points.

ii. Owners that have committed to providing at least ten 811 units under the 2015 811 Request for Proposals ("RFP") to be published November 2015 (committed units may not count for points under any other program) or applicants whose proposed Development site is not within the targeted areas of the 2015 811 NOFA, but is willing to set aside at least 5 percent of the total Units for Persons with Special Needs in accordance with §11.9(c)(7)(C) of the 2016 Qualified Allocation Plan (committed units may not count for points under any other program) (1 point).

iii. An application that caps the per unit subsidy limit for all unit sizes at:

A) $100,000 per HOME/TCAP RF unit (1 point).

B) $80,000 per HOME/TCAP RF unit (2 points).

C) $60,000 per HOME/TCAP RF unit (4 points).

iv. An application that provides Match in the amount of:

A) 5.1% to 9.0% of the HOME/TCAP RF requested (3 points).

B) 9.1% or more of the HOME/TCAP RF requested (5 points).

C) Match provided in an area where HUD has waived match requirements (5 points).

b. Only applications proposing rehabilitation will have the opportunity to score points in i. through vi., for a maximum of six points:

i. An existing USDA 515 loan that matures January 4, 2021 or earlier (1 point).

ii. At least 80% of the units are Rental Assistance units (1 point).

iii. The Capital Needs Assessment estimates at least $30,000 per unit in rehabilitation costs (1 point).

iv. The past six months' rent rolls indicate at least 95% occupancy in all of the last 6 months for all in-service units (1 point).

v. The development is composed of 36 units or less (2 points).

vi. The development will not be acquired by another entity as part of the transaction and the developer fee is capped at:
   A) 10% of total development cost (1 points).
   B) 5% of total development cost (2 points).

6) **Maximum Funding Requests**
   a. The maximum funding request for all applications proposing new construction in all set-asides except the Deferred Forgivable Loan Set-Aside, regardless of HOME or TCAP Repayment funds and regardless of layering, shall be $2,000,000.
   b. The maximum funding request for all applications proposing rehabilitation or applications in the Deferred Forgivable Loan Set-Aside proposing either rehabilitation or new construction, regardless of HOME or TCAP Repayment Funds and regardless of layering, shall be $1,000,000.

7) **Maximum Per Unit Subsidy Limits.** The following are the maximum per unit subsidy limits that an applicant may use to determine the amount of HOME/TCAP funds they may request. Stricter per unit subsidy limits are allowable and incentivized as point scoring items in the Scoring Criteria section of this NOFA. Per unit subsidy limits as well as subsidy layering analysis – ensuring that the amount of HOME/TCAP units as a percentage of total units is greater than the percentage of HOME/TCAP funds requested as a percentage of total development costs – will determine the amount of HOME/TCAP units required.
   a. 0 bedroom (efficiency): $75,000
   b. 1 bedroom: $90,000
   c. 2 bedrooms: $110,000
   d. 3 bedrooms or more: $135,000

8) **Loan Structure**
   a. Except for deferred forgivable loans, all Multifamily Direct Loans awarded under this NOFA will be structured as fully repayable (must pay) at not less than a 3.0% interest rate and 30 year amortization with a term that matches the term of any superior loans (within 6 months) and an ultimate interest rate that when underwritten by the Department meets a 1.15 to 1.35 debt coverage ratio. The Board may amend this NOFA to adjust the minimum rate as market conditions change.
   b. Any material changes to the total development cost and/or other sources of funds from the publication of the Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff and may cause changes to principal amount and/or repayment structure for the Multifamily Direct Loan such that the Department is able to mitigate any increased risk.

9) **Application Submission Requirements**
   a. Applications under this NOFA will be accepted starting January 4, 2016.
   b. All Application materials including manuals, NOFAs, program guidelines, and HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of the HOME Final Rule and subsequent guidance provided by HUD.

c. An Applicant may have only one active Application per Development at a time and may only apply under one set-aside at a time.
d. All applicants will be subject to the 2016 Uniform Multifamily Rules, except as it relates to interest rate and amortization in 10 TAC §10.307, and must use the 2016 Uniform Multifamily Application and Certifications as applicable.
e. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department. Applicants must submit the Application materials as detailed in the Multifamily Programs Procedures Manual ("MPPM") in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the MPPM in effect at the time the Application is submitted.
f. Applicants must complete the 2016 CHDO Certification Packet for Applicants applying under the CHDO Set-Aside.
g. All 4% HTC-layered applications must have a certificate of reservation at the time of Multifamily Direct Loan application submission.
h. Applications for funds on developments that received an award of Department assistance – not including HOME or TCAP Repayment funds – within the past three years may be submitted but may be terminated if it is determined that federal regulations would prohibit the Department to invest HOME or TCAP Repayment funds in the Development.
i. Based on the availability of funds, Applications may be accepted until 5pm Austin Local Time on May 31, 2016.
j. The request for project funds may not be less than $500,000, regardless of the set-aside under which an application is being submitted.
k. Each CHDO that is awarded HOME funds may also be eligible to receive a grant of up to $50,000 for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies.
l. Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $1,000.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the Multifamily Direct Loan Program.
m. Applications must be sent via overnight delivery, or delivered by hand to:

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Andrew Sinnott
221 East 11th Street
Austin, TX 78701-2410

or via the U.S. Postal Service to:

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Andrew Sinnott
Post Office Box 13941
Austin, TX 78711-3941

10) **Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC §10, Subchapter E, as well as the Compliance Monitoring requirements in 10 TAC §10, Subchapter F.
    a. Applicants who receive an award of HOME funds must submit all required environmental clearance documentation to environmental@tdhca.state.tx.us within 30 days of approval by TDHCA's Governing Board.
    b. Awarded applicants may, at the Department's discretion, be charged fees for underwriting, asset management, and ongoing monitoring.
    c. All Applicants will be required to record a Land Use Restriction Agreement limiting residents' income and rent for the amount of units required by the HOME/TCAP RF Unit Calculation Tool for the term of the loan.
    d. Applicants must provide documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act and will be required to comply with 10 TAC §10.617.
    e. All Developments awarded HOME funds will be required to meet applicable Property Standards in 24 CFR §92.251. Applicants will also be required to submit written cost estimates and construction documents at closing in order that TDHCA can determine if costs are reasonable and if state and local codes will be met. In addition, progress inspections will be conducted to ensure that work is done in accordance with applicable codes and construction documents. Owners of Rehabilitation projects will also be required to meet the requirements in 10 TAC §10.101 (b)(3)(D)(i-iv).
    f. The HOME/TCAP RF units must be occupied by eligible tenants within six months following completion of construction. For any housing unit that has not been rented to eligible tenants within 18 months after completion of construction, repayment of the HOME/TCAP funds is required.
    g. All applicants must be registered in the federal System for Award Management (SAM) prior to execution of a HOME/TCAP RF contract and have a current Data Universal Numbering System (DUNS) number. Applicants may apply for a DUNS number (dnb.com). Once you have the DUNS number, you can register with the SAM.

11) **Miscellaneous**
    a. This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.
    b. All Applicants must comply with public notification requirements in 10 TAC §10.203.
    c. Applicants proposing developments located outside Participating Jurisdictions, must include language in the Purchase Contract or Site Control Agreement to address choice

limiting activities prior to completing the environmental review process such as the following: "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until TDHCA has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. TDHCA shall use its best efforts to conclude the environmental review of the property expeditiously."

d. The Board may on a case by case basis, or in whole, waive provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented and where such exception is not in violation with any state or federal requirement(s).
e. For questions regarding this NOFA, please contact Andrew Sinnott, Multifamily Loan Program Administrator, at andrew.sinnott@tdhca.state.tx.us.

Attachment A

Regional Allocation Formula Amounts
Available Until 5pm Austin Local Time on January 29, 2016

Urban Sub-Regions	HOME	TCAP RF	Total Sub-Region Amounts
Region 1	$150,862	$261,458	$412,320
Region 2	$55,426	$94,737	$150,163
Region 3	$1,890,442	$2,530,723	$4,421,165
Region 4	$463,781	$223,693	$687,474
Region 5	$208,253	$154,846	$363,099
Region 6	$472,833	$2,215,570	$2,688,403
Region 7	$1,194,119	$854,882	$2,049,001
Region 8	$170,076	$274,786	$444,862
Region 9	$376,561	$925,767	$1,302,328
Region 10	$280,388	$258,411	$538,799
Region 11	$415,831	$1,135,707	$1,551,538
Region 12	$258,944	$180,156	$439,100
Region 13	$444,922	$538,105	$983,027
TOTAL URBAN	**$6,382,436**	**$9,648,838**	**$16,031,274**

Rural Sub-Regions	HOME	TCAP RF	Total Sub-Region Amounts
Region 1	$489,226	$143,811	$633,037
Region 2	$375,590	$112,693	$488,283
Region 3	$414,969	$120,514	$535,483
Region 4	$1,074,373	$310,681	$1,385,054
Region 5	$637,247	$187,753	$825,000
Region 6	$261,967	$80,532	$342,499
Region 7	$128,692	$40,419	$169,111
Region 8	$377,855	$115,020	$492,875
Region 9	$334,590	$95,837	$430,427
Region 10	$396,212	$115,230	$511,442
Region 11	$658,933	$186,234	$845,167
Region 12	$282,688	$79,544	$362,232
Region 13	$44,318	$12,894	$57,212
TOTAL RURAL	**$5,476,660**	**$1,601,162**	**$7,077,822**

7a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Texas Government Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, the proposed amendments to Chapter 11 were published in the September 15, 2015, issue of the *Texas Register* for public comment; and

WHEREAS, pursuant to Texas Government Code §2306.6724(b) the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15;

NOW, therefore, it is hereby,

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan and the final order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register;* and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor, prior to November 15th for his review and approval, and to cause the Qualified Allocation Plan, as approved, to be approved with changes or rejected by the Governor, an thereafter be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan ("QAP") at the Board meeting of September 11, 2015, to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments. Staff has listed the areas below that received the most comment.

1. §11.4(c) Increase in Eligible Basis
2. §11.6(3) Award Recommendation Methodology
3. §11.7 Tie Breaker Factors
4. §11.9(b)(2) Previous Participation Compliance History
5. §11.9(c)(4) Opportunity Index
6. §11.9(c)(5) Educational Excellence
7. §11.9(c)(6) Underserved Area
8. §11.9(c)(7) Tenant Populations with Special Housing Needs
9. §11.9(c)(8) Aging in Place
10. §11.9(c)(9) Proximity to Important Services
11. §11.9(d)(5) Community Support from a State Representative
12. §11.9(d)(7) Concerted Revitalization Plan
13. §11.9(e)(2) Cost of Development Per Square Foot
14. §11.9(e)(6) Historic Preservation

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Preamble, Reasoned Response, and Amended Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 11, §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.2, 11.4, 11.6, 11.7, and 11.9 are adopted with changes to text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6466). Sections 11.1, 11.3, 11.5, 11.8, and 11.10 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 15, 2015, with comments received from (1) Foundation Communities, (2) Don Zimmerman, Austin City Councilman, (3) Texas Affiliation of Affordable Housing Providers, (4) Alyssa Carpenter, (5) Palladium USA, (6) Chris Boone, City of Beaumont, (7) Rural Rental Housing Association of Texas, (8) Fountainhead Management, Inc., (9) Dennis Hoover, (10) Houston LISC, (11) Alan Warrick, San Antonio City Councilman, (12) Ivy Taylor, Mayor of San Antonio, (13) Pedro Martinez, San Antonio Independent School District, (14) United Way of San Antonio, (15) Congressman Lloyd Doggett, (16) VIA Metropolitan Transit San Antonio, (17) San Antonio Housing Authority, (18) Tommy Calvert, Bexar County Commissioner, (19) R.L. "Bobby" Bowling IV, (20) Brad McMurray, (21) Structure Development, (22) Cynthia Bast, Lock Lord, (23) New Hope Housing, (24) Mary Henderson, (25) Vecino Group, (26) Daniel & Beshara, P.C., (27) Brownstone Affordable Housing, (28) Arx Advantage, LLC, (29) Hettig-Kahn, (30) Housing Lab by BETCO, (31) Marque Real Estate Consultants, (32) Texas Appleseed/Texas Low Income Housing Information Service, (33) Casa Linda Development Corporation, (34) Barry Palmer, Coats Rose, (35) Scott Marks, Coats Rose, (36) Texas Coalition of Affordable Developers, (37) Terri Anderson, (38) National Housing Trust, (39) Darrell Jack, (40) Madhouse Development Services, (41) Judy Telge, Coastal Bend Center for Independent Living, (42) Motivation Education & Training, et al., (43) Kim Schwimmer, (44) Christopher Myers, (45) Pedcor Investments, (46) Jen Joyce Brewerton, Dominium, (47) Jessica Perez, Capstone Management, (48) M Group, (49) National Church Residences, (50) DMA Development Company, (51) Texas Association of Community Development Corporations, (52) Cayetano Housing, (53) Disability Rights Texas, (54) Easter Seals Central Texas, (55) Eduardo Requena, (56) Ines Medrano, (57) Jannathan Fam, (58) John McMillian, (59)Mimay Phim, (60)Portia Haggerty, (61)Thy Phamnguyen, (62) Wanda Posteal, (63) Deborah Thompson, Wells Branch Neighborhood Association, (64) Wendell Dunlap, Mayor of Plainview, (65) Christopher Fielder, Mayor of Leander, (66) Roxanne Johnston, City of Big Spring, (67) Tracy Cox, City of San Augustine, (68) Jason Weger, Cisco City Councilman, (69) Tim Barton, Cisco ISD, (70) Suzonne Franks, (71) James King, Mayor of Cisco, (72) Cisco Economic Development Corporation, (73) Wilks Brothers, LLC, (74) Michael Cary, Prosperity Bank, Cisco, (75) Myrtle Wilks Community Center, (76) Patrick Hoiby, Equify, LLC, (77) Breckenridge Exploration Co., Inc., (78) Board of Trustees, Cisco ISD, (79) Cisco Chief of Police, (80) Tammy Osborne, City of Cisco, (81) Cisco Chamber of Commerce, (82) Phil Green, Cisco City Councilman,

(83) Keep Cisco Beautiful Organization, (84) Peggy Ledbetter, Interim Cisco City Manager, (85) Tammy Douglas, Cisco City Councilwoman, (86) Matt Johnson, Cisco Post Master, (87) Russell Thomason, Criminal District Attorney, (88) Dennis Campbell, Cisco City Councilman, (89) Columbia Residential, (90) Jill Rafferty, Studewood Community Initiative, (91) Monica Washburn, (92) State Representative Ryan Guillen

1. §11 – General Comment (35), (90)

COMMENT SUMMARY: Commenter (35) indicated that by further compressing the above-the-line scoring items such that the maximum points for financial feasibility are only 13 points and a State Representative letter is worth only 4 points, the Department can amplify the effect of below-the-line scoring items such as the Underserved Areas. Such point modifications, according to commenter (35) could offset the trump card of NIMBYs that play out during the application cycle. Furthermore, commenter (35) proposed that negative QCP letters could also lead to deducting fewer points and suggested a deduction of 2 points. The suggested scoring matrix proposed by commenter (35) is located in the public comment supplement included in this presentation.

Commenter (90) asserted that the recommendations submitted by city and county planning departments and nonprofit housing organizations on the QAP over the past several years seek to facilitate the approval of future projects and not to develop consistent application of fair housing guidelines. Commenter (90) contended that the modifications to the QAP over the years have reached the point where little objective analysis is required and the use of algorithms or other objective data analysis tools for the review of proposed sites have been eliminated. Commenter (90) further maintained that the Department ought to formulate consistent fair lending guides rather than pandering to the momentary needs of project developers.

STAFF RESPONSE: In response to commenter (35) staff believes that the legislative priorities, as set out in statute, are more appropriately addressed by the proposed rule rather than by the changes suggested in these comments. In particular, changing the point value as suggested by the commenter would negatively affect the correlation between the statute and the rule. Moreover, staff believes the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption.

Staff recommends no changes based on these comments.

2. §11.1(e) – Census Data (63)

COMMENT SUMMARY: Commenter (63) requested that the census data for surrounding areas within a ZIP code be taken into consideration as opposed to the use of data from individual census tracts, further stating that expanding the information gathered to include an entire ZIP code will allow all concerned a more comprehensive view of demographics and impact on a community as a whole.

STAFF RESPONSE: Staff appreciates the comment; however, much of the demographic data available to the Department is more reliable on a census tract level compared to ZIP codes because census data is collected on a census tract basis and ZIP codes do not always follow census tract boundaries. Moreover, to make such a change would be a significant modification in numerous areas of the rules associated with the evaluation process not identified by the general comment expressed.

Staff recommends no changes based on these comments.

3. §11.2 – Program Calendar (22), (32)

COMMENT SUMMARY: Commenter (22) suggested the deadline for submission of the 10% test be consistent with the date noted under §10.402(g) of the Uniform Multifamily Rules. Commenter (32) expressed support for the proposed due date for the local government and state representative letters.

STAFF RESPONSE: In response to commenter (22), staff has modified the date in the program calendar accordingly and appreciates the support as expressed by commenter (32).

4. §11.3 – Housing De-concentration Factors (32), (38), (45)

COMMENT SUMMARY: Commenter (38) expressed general support for the exemptions allowed for preservation developments under some of the de-concentration requirements.

As it relates to the Limitations on Developments in Certain Census Tracts de-concentration factor, commenter (32) disagreed with the proposed language which allows local jurisdictions to essentially waive the limitation on adding HTC units into a neighborhood where the existing HTC units makes up 1 in 5 of the housing units in the jurisdiction. Commenter (32) illustrated that in 2015 only 115 of the state's 5,265 census tracts fell into this limitation and further commentated that those neighborhoods are the most egregious examples of over-concentration of HTC units. To make this limitation meaningful, commenter (32) requested the 20% be a meaningful, hard cap and to lower the waivable cap to 10%.

Commenter (45) advocated that the provision of the additional phase rule in this section unnecessarily delays putting units on the ground at otherwise eligible sites and further contended that any evaluation of a proposed site is going to somehow include adjacent sites, no matter the distance, and that they will be evaluated for demand based on factors already provided in the rule (i.e. de-concentration, undesirable characteristics and feasibility). Commenter (45) recommended the additional phase rule be removed.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (38). In response to commenter (32), staff believes that in order to maintain consistency with other rule requirements regarding de-concentration, the proposed rule more appropriately addresses de-concentration goals than the changes suggested in these comments. Moreover, staff believes the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption.

In response to commenter (45) this provision has been a long-standing policy of the Department which is associated with limitations on development size and the impact of sudden concentration without phased demonstration of demand. In addition, it would encourage the acquisition of sites that may be larger than necessary for any subject application to effectively bank land.

Staff does not recommend any changes based on these comments.

5. §11.4(b) – Maximum Request Limit (3), (7), (45)

COMMENT SUMMARY: Commenter (3), (7) requested a new credit cap for USDA applications of $750,000 based on the belief that most of these developments are small and therefore such cap is appropriate.

Commenter (45) requested clarification regarding request limits for elderly developments in those regions prescribed under HB 3311 and proposed that those requests should be treated the same as those requests that might exceed the overall limit. Commenter (45) recommended the following modification:

> "For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published in the Site Demographic Characteristics Report after the release of the Internal Revenue Service ("IRS") notice regarding the 2016 credit ceiling. For all Applications,~~The~~ the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))"

STAFF RESPONSE: In response to commenter (3), (7) staff believes that the legislative requirements as set out in statute are more appropriately addressed by the proposed rule than by the changes suggested in this comment. In particular, the Maximum Request Limit has been established by statute and setting a cap for applications in the USDA set-aside is not consistent with statute. Moreover, staff believes the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption. In further response to commenter (7) regarding the farm worker housing application submitted, if farm worker housing receives funds from USDA to be eligible for the USDA set-aside, staff does not recommend that the Board de-prioritize farm worker housing under this set-aside at this time. This may be discussed and considered in developing the next QAP.

In response to commenter (45) staff agrees and has changed the rule accordingly with a slight modification regarding where the information will be published:

> "For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications,~~The~~ the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded.

Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))"

6. §11.4(c) – Increase in Eligible Basis (3), (22), (32), (36), (45)

COMMENT SUMMARY: Commenter (3) requested paragraph (2) relating to the boost for small area DDAs be deleted in its entirety stating that such provision only allows the boost when the certificate of reservation is received in the same year as the small area DDA designation. Commenter (3) stated that because such designations are subject to change annually, the site may no longer have the designation the following year and stated that the proposed language forces a 4% HTC application that receives a certificate of reservation after the mid-August collapse to close before the end of the calendar year further compressing the 150-day timeline associated with the reservation. Similarly, commenter (22) suggested subparagraphs (1) and (2), relating to QCT and DDA designations respectively, be removed with the justification that the Department does not need to modify or expound upon the federal law that allows such increase in eligible basis, it should simply follow it.

Commenter (36) requested the language relating to the boost for DDA areas be modified to include a definitive statement that such areas are eligible for the boost. Commenter (36) believed that the proposed language seems to imply that the applicant would need to prove that the boost is required, thus leaving doubt with the applicant on the Department's determination on the matter.

Commenter (32), (45) expressed support for the inclusion of difficult to development areas.

STAFF RESPONSE: In response to commenter (3), the current language in the rule states the DDA designation would correspond with the year the Certificate of Reservation is issued, not that the transaction would have to close within the same calendar year. If the Certificate of Reservation is issued after the August collapse, the Department will underwrite including the 30% boost and the applicant will be allowed the full 150-days under the Certificate of Reservation by which to close which could be in the subsequent program year.

In response to commenter (22) staff recognizes that Section 42 allows the boost but as with many other elements of Section 42, it leaves to the State allocating agency through its QAP the ability to determine what state policies may affect implementation. In this case, the inclusion of the SADDA in the rule provides additional clarification in the context of documentation required in the application and allows for DDA boost which has not been allowed in the QAP in the last few years.

Staff appreciates the support expressed by commenter (32), (45).

In response to commenter (36) the application would have to demonstrate that the boost is required for financial feasibility. The language in this section does not add anything new with regard to the determination of the need for the boost; however staff believes and the IRS has confirmed with staff that such practice is consistent with Section 42 (m) in that despite being in an area that would otherwise qualify for the boost, the Department is required to allocate not more credits than are necessary to demonstrate financial feasibility.

Staff does not recommend any changes based on these comments.

7. §11.5(3) – Competitive HTC Set-Asides (7), (32), (38), (42)

COMMENT SUMMARY: Commenter (7) indicated that an application for farm worker housing in the 2015 application round, using USDA 514 funds for new construction is reasonable to compete within the other USDA set aside applicants, but requested that they be limited to $750,000, because the approximately $800,000 in credits associated with a 2015 application would have taken 26% of the available funds in the USDA set-aside. Commenter (7) believed that while farmworker housing is deserving, the reduction in the set-aside is unacceptable considering their goal of preserving USDA units. Commenter (7) recommended a limit of one new construction award from the USDA set-aside in each application cycle for the USDA 515 and 514/516 properties. For a future consideration, commenter (7) requested a minimum 10% of available funds be set-aside for USDA properties with consideration of a Department preservation policy and priority points reflecting rural preservation priorities. With respect to the At-Risk set-aside, other than USDA, commenter (7) supports a limitation of $1.5 million.

Commenter (32), (42) expressed support for the language as proposed under the USDA Set-Aside. Commenter (42) further stated several reasons for prioritizing farmworker housing with scoring advantages which include the following:

- Stabilizes the agricultural economy and agricultural workers in Texas with housing;
- Brings more rental assistance and federal dollars to Texas;
- Rental Assistance synergizes LIHTC and allows LIHTC units to reach 30% AMI;
- Rental assistance is lost with natural mortgage pay-offs when it should be a preservation tool; and
- Rental assistance makes LIHTC units accessible to farmworkers.

Commenter (42) noted that a 2012 Department study stated that 92.7% of farmworkers are not served by the 28 farmworker-designated developments in the 49 rural counties that were studied. Moreover, commenter (42) encouraged the Department to consider the recommendations in the study that were connected to the HTC program, in the development of the QAP.

Commenter (38) expressed support for the 15% set-aside for at-risk developments and associated prioritization of the preservation and rehabilitation of existing multifamily housing.

STAFF RESPONSE: In response to commenter (3), (7) staff believes that the legislative requirements as set out in statute are more appropriately addressed by the proposed rule than by the changes suggested in this comment. In particular, the Maximum Request Limit has been established by statute and setting a cap for applications in the USDA set-aside is not consistent with statute. Moreover, the extent of the changes to the nature of the proposed rule suggested by the commenter would appear to require renewing the rule-making process and re-publication prior to adoption. In further response to commenter (7) regarding the farm worker housing application submitted, if farm worker housing receives funds from USDA to be eligible for the USDA set-aside. Staff does not believe it has the authority to de-prioritize or further prioritize farm worker housing under this set-aside without additional policy directive from the Board. Moreover, the extent of the changes to the nature of the proposed rule suggested by the commenter would appear to require renewing the rule-making process and re-publication prior to adoption.

In response to commenter (42) staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2017 QAP.

Staff appreciates the support expressed by commenter (38).

Staff does not recommend any changes based on these comments.

8. §11.6(3) – Award Recommendation Methodology (28), (32), (35), (45), (50)

COMMENT SUMMARY: Commenter (28), (35) asserted that the language in HB 3311 is clear in being directed at the sub-regions and further maintained that since the At-Risk set-aside does not differentiate between regions and sub-regions or rural and urban, it should be clear that the At-Risk set-aside should not be included in the formula that places a cap on the amount of credits attributed to elderly developments. Commenter (35), (49) similarly expressed that because the Department has traditionally disregarded subregions in allocating under the At-Risk set-aside, which has been stated in the QAP for a while, the legislative intent behind HB 3311 is that it should also not apply to the At-Risk set-aside. Commenter (49), (50) contended that the intent was not to apply the formula to the At-Risk set-aside which is funded before the regional allocation is funded and that the formula does not reflect the need of persons (senior or family) already housed in affordable units which may or may not be eligible for prepayment and in need of rehab. Commenter (50) advocated that the following revision be made to this section:

> "(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. ~~This includes any Applications awarded under subparagraph (B) of this paragraph.~~ The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h). These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h))."

Commenter (49) expressed that the intent of HB 3311 was not to be implemented in the preservation or At-Risk set-aside based on the following: the At-Risk set-aside is not subject to the sub-regional pool caps and thus is not subject to the elderly sub-regional cap; At-Risk developments do not increase the number of new low-income elderly units created; HB 3311 does not specify that the cap is to be applied to the At-Risk set-aside; At-Risk elderly and At-Risk general population developments have equal scoring so there is no extra incentive to preserve elderly over family; and by splitting the limited amount of funding under the formula, the State would be implementing the exact opposite of its intention of ensuring that seniors are provided access to affordable housing resources. Commenter (49) further contended that if the formula was to apply to the At-Risk set-aside it would have the exact opposite of the bill's intent by significantly reducing the dedicated senior tax credits and further asserted that "the bill would not have been passed if the intent was to stifle a community by blocking," such developments from accessing the resources needed to preserve these developments.

Commenter (32) requested the Department make public the details of its calculations to implement HB 3311; specifically, identifying the HISTA variable names and definitions used. Commenter (32)

noted that data presented to the legislature during discussions relating to HB 3311 used the relative elderly vs. non-elderly renter populations in the calculations to determine the regional cap. Should alternative methodology be used, commenter (32) believed it to be misleading considering what the legislature relied upon when adopting the language contained in the bill.

Commenter (45) requested clarification regarding the maximum percentage of credits available for elderly development as it relates to returned credits. Assuming the calculation is based on awarded developments (not placed in service), commenter (45) believed that if credits are returned from a previous cycle, the amount of credits available to elderly applications should not be adjusted and that the credit returned should not be considered in subsequent calculations. The possibility of never-ending re-calculations based on returns, according to commenter (45), could create confusion and the potential for errors; therefore, a fixed maximum percentage at the beginning of cycle will ensure transparency and compliance with the statutory provision. Commenter (45) advocated for the following modification to the methodology under subparagraphs (C) and (E):

> "…In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum ~~percentage~~ amount of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. This includes any Applications awarded under subparagraph (B) of this paragraph. The Department will, for each such Urban subregion, calculate the maximum ~~percentage~~amount available for Elderly Developments in accordance with Texas Government Code, §2306.6711(h). These ~~calculations~~maximum amounts will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)) and will be final, regardless of any returned credit from previous cycles, but may be exceeded only if necessary to comply with the nonprofit set-aside required by §42(h)(5) of the Code."

STAFF RESPONSE: In response to commenters (28), (35), (49) and (50), staff agrees and is recommending that the credits made available under the "at risk" set-aside not be included in the competitive tax credits subject to the cap on elderly developments. This is based on the fact that only tax credits treated under the subregional set asides are allocated solely to covered subregions, and the credits in the "at risk" set aside are available statewide. The proposed modification includes the following:

> "(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. ~~This includes any Applications awarded under subparagraph (B) of this paragraph.~~ The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website. ~~These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h))~~….

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion~~.~~ ~~This includes any Applications awarded under subparagraph (B) of this paragraph.~~ The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website. ~~These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)).~~This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:…"

In response to commenter (32), staff has applied a plain language reading of the statute to determine that all elderly households will be used in the denominator of the formula to calculate the percentage of credits that will be available for elderly developments in the impacted regions. When the percentages are published, staff can include the HISTA variable names and Place names.

Staff agrees with commenter (45) regarding how credit returns from a previous cycle should be treated. The return of credits in an affected subregion, associated with a large development, regardless of whether it was elderly or general, would have a de minimis (less than 0.1%) effect on the percentage. Staff does not believe a re-calculation of the maximum percentage would significantly change the amount of credits available and factored into the calculation.

Staff does not recommend any changes based on this comment.

9. §11.6(5) – Competitive HTC Allocation Process – Force Majeure Events (1)

COMMENT SUMMARY: Commenter (1) stated that the greatest impact on the timing of a project's completion date are a series of compounding events, for example, a rainy month, a labor shortage, and a City's change in interpretation of specific development requirements. Commenter (1) requested staff consider that where there is the presence of three or more of the combined factors that has caused a project to push past their placed in service deadline, it be considered a force majeure event.

STAFF RESPONSE: The rule as written allows for multiple events to be considered in making a determination which staff will evaluate on a case by case basis.

Staff does not recommend any changes based on this comment.

10. §11.7 – Tie Breaker Factors (1), (3), (4), (7), (9), (21), (30), (31), (32), (36), (45)

COMMENT SUMMARY: Commenter (1) requested consideration for the addition of proximity to public transportation as a tie breaker. The choice between two really high opportunity urban areas

should come down to the one that is most accessible to public transportation because it has a broader appeal to those residents living in urban areas, according to commenter (1). Commenter (3), (7), (9), (30), (31), (45) recommended the following modification to the fourth tie breaker on the basis that it will assist with the on-going de-concentration efforts:

> "(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type~~assisted Development~~. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary."

Commenter (4), (31), (36) expressed concern over the third tie breaker that only comprehends one population type when there is a potential to have two tied applications serving two different populations. Commenter (4) asserted that since elderly and supportive housing developments are impacted by schools with regard to the opportunity index and educational excellence then the tie breaker should be considered for all developments. Commenter (4), (31), (36) recommended the following modification for the third tie breaker:

> "(3) ~~For competing Applications for Developments that will serve the general population, the~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest."

Commenter (21) recommended that for the second tiebreaker the full and exact real number, as provided by the ACS, without rounding, be used and further cited the Departments Site Demographics Report which uses only one decimal place rather than the full number. Commenter (21) proposed the following modification:

> "(2) Applications proposed to be located in a census tract with the calculated lowest poverty rate, as published by the American Community Survey, as compared to another Application with the same score."

Commenter (45) contended that very specific data regarding a site (i.e. poverty rate and school score) that is already incorporated into scoring and then again into the first tie breaker factor should not be given additional weight, but rather, other criteria outside of the opportunity index should be considered. Commenter (45) suggested the tie breaker factors relating to poverty rate and school score be removed and that should the Department choose to include additional factors, recommended the following, in the order of most appropriate:

> "(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score;~~.~~
>
> (2) Applicants with a portfolio that has a compliance history in the lowest category as determined in accordance with 10 TAC §1.301, related to Previous Participation;
>
> (3) Applications eligible for the highest number of points under §10.101(a)(2), relating to Mandatory Community Assets;
>
> (4) Applications in census tracts with the lowest percentage of Housing Tax Credit Units per household;
>
> (5) Applications with the highest combined scores for Local Government Support, commitment of Development Funding by Local Political Subdivision, Declared Disaster Area, Quantifiable Community Participation, community Support from

State Representative, Input from Community Organizations, and Concerted Revitalization Plan under subsection §11.9(d) of this chapter (relating Competitive HTC Selection Criteria);

(64) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary."

Commenter (32) expressed support for the changes proposed in this section and maintained that such changes prevent the over-reliance on the distance tiebreaker created by the lack of detail in the opportunity index.

STAFF RESPONSE: In response to commenter (1), proximity to public transportation can be an important factor for developments serving certain populations and is already included as an option under §10.101 (a) Mandatory Community Assets.

In response to commenters (3), (7), (9), (30), (31), and (45), staff believes that concerns regarding concentration of housing are not based on targeted population. Moreover, this tiebreaker has to do with allocation of resources in a specific area.

In response to commenters (4), (31), and (36), staff agrees that the limitation of tiebreaker (3) to general population developments is not appropriate. The item will be modified to remove the reference to type of development so that the tie breaker applies to all applications.

In response to commenter (21), §11.1(e) already requires the use of census or American Community Survey ("ACS") data. The use of additional digits after the decimal will not create a meaningful measurement for the tie breaker, particularly when there are two other tie breakers to be applied.

In response to commenter (45), the suggested changes to the tiebreakers are a significant change to the current structure, which has not been available for public comment. Further, regarding the suggestion to add the sponsors previous participation history as a tie breaker, this scoring item will be removed from the QAP for this year in response to multiple commenter concerns.

Staff appreciates the support expressed by Commenter (32).

11. §11.9(b)(2) – Selection Criteria – Previous Participation Compliance History (1), (3), (4), (19), (28), (30), (32), (34), (36), (45), (46), (48), (49), (50)

COMMENT SUMMARY: Commenter (1) expressed that points associated with compliance history is not good policy and further stated, along with commenter (30), (49), that instances where the ability to correct such a situation is completely out of the owner's control has no bearing on the quality of an owner's development or compliance ability. Commenter (30), (49), (50) indicated there are times when staff review exceeds the 90-day correction period deadline, requiring more information from the applicant and questioned whether this would impact the category designation. Commenter (1) recommended points for compliance history be removed and this scoring item reflect points only for HUB or nonprofit participation.

Commenter (3), (30), (48) requested clarification with respect to the previous participation compliance history scoring item; specifically how an applicant would determine which category applies to them with commenter (28), (48) stating it will be difficult to determine what points to assign to this scoring item. Commenter (3), (30) recommended that the category of an applicant be tied to March 1, 2016 to provide clarity within the competitive round as it relates to scoring. Commenter (28) recommended the scoring item be somewhat like a pilot program for 2016 with the points not actually considered in the final score which would provide an opportunity to evaluate further for the 2017 application cycle. Commenter (46) suggested that it is not reasonable to ask an applicant to assess their own category standing since some compliance history less than 3 years old is not captured in the Department's monitoring system and further suggested that the Department should provide the applicant with their category designation in advance of the pre-application deadline. Moreover, commenter (46) suggested that assessing everyone's category designation will be an administrative burden on the Department if the right tools are not in place. Commenter (48) stated that correction of a finding out of state within the correction action period is not verifiable and they further questioned whether the Department could verify out of state non-corrected compliance findings.

Commenter (19), (46) expressed support for a scoring item that rewards developers that have a track record of excellent performance; however, disagreed with the draft language which puts experienced developers with excellent track records in the same category of a developer with no record of performance in tax credit development. Such policy of ignoring good performance, according to commenter (19), runs contradictory to the private sector because an excellent record of performance is the most important factor to private lenders and investors. Commenter (19) recommended the following revision to this scoring item and further commented that for those applicants seeking to receive the point under (ii) having no track record, the rule allows for a partnership with an experienced developer and brings the policy in line with the private sector and what a bank or investor would be looking for before approving a proposal from an entity with no experience.

> "(i) The portfolio of the Applicant has a~~does not have~~ compliance history of a category 1~~2, 3, or 4~~ as determined in accordance with 10 TAC §1.301, related to Previous Participation~~;~~ (~~1~~2 points); or
>
> (ii) The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10 TAC 1.301, related to Previous Participation (1 point)."

Similarly, commenter (45) expressed support for this item and it remaining a determining factor in the awards made, but believed it could be given up to 4 points in weight asserting that the performance of developers and owners that participate in the program are paramount to its success and that it is meaningless to develop and own an HTC property and then operate it in a manner that does not adequately serve Texans in need of housing. Commenter (45) emphasized that this scoring item does not penalize out-of-state developers, it takes into consideration portfolio size, it does not penalize owners for having findings but only for not correcting those findings timely and it is generally concise and easy to understand. Commenter (45) contended that if the proposed language is revised, they would support a scoring item that awarded 2-4 points for Category 1 portfolios and 1-2 points for those with a Category 2 portfolio and would also support a scoring penalty (1 or 2 points) for those with a Category 3 or 4 portfolio, only because it would have the same impact. Moreover, a scoring item that took into account the compliance history of only the

majority owner of the general partnership interest, so that owners with good compliance histories would still be motivated to partner with a non-profit or HUB that might have had some compliance issues in the past, would also garner support from commenter (45).

Commenter (32) expressed support for this scoring item which they believe addresses applicants with a negative compliance history but does not discourage new entrants to the competitive process. Commenter (32) suggested this scoring item be modified to state that the point is unavailable to any applicant with a portfolio that includes a relevant property that has failed to timely and completely file a Housing Sponsor Report in the last 3 years. Commenter (32) maintained that such Report provides important insight into the activities of existing properties but is not always submitted.

Commenter (46) indicated the scoring item unfairly provides preference to out-of-state applicants without Department experience which appears to be the opposite of the intent of the item which is to reward strong developers with a strong compliance history.

Commenter (34), (36), (47) requested the points associated with compliance history be removed from this scoring item and be revisited for the 2017 application cycle. If this point remains; however, commenter (47), (50) recommended that a Category 2 portfolio be removed from the list such that Category 1 or 2 applicants could still receive the additional point. Commenter (50) suggested that the Category 1 designation, for those with an extra large portfolio would require not a single issue of non-compliance not corrected within the corrective action period, which is almost impossible to achieve, especially considering that the Department's compliance staff often does not review the corrective action within the corrective action period. Moreover, commenter (47) suggested the category designation be tied to an applicant's previous participation history at the beginning of the 2016 application cycle and that any outstanding non-compliance that occurred before the beginning of cycle not be considered for the category designation. To that end, commenter (47) offered the following modification:

> "(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category ~~2,~~ 3~~,~~ or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. This point category will be applicable to any events of noncompliance that are uncorrected or events of noncompliance that were not corrected during the corrective action period for the Applicant's previous participation history as of March 1, 2016. (1 point)"

Commenter (4) asserted that points for compliance history is in essence double counting the review since previous participation is already contemplated during the award process and further contended that the ultimate goal of the previous participation was to require developers to fix any outstanding issues as a condition of award. Commenter (4) maintained that such process does not seem reasonable when the review and category designation appears to look back at issues that occurred prior to the implementation of the category system and which have to ability to correct. It was the recommendation of commenter (4) that this point item be deleted until applicants and staff have a better understanding of the category system and what is involved in the evaluation and that option (A) under this item be revised to reflect 2 points, instead of 1 point.

Commenter (48) expressed concern over how to equitably reward points to all developers without competitive advantage to a select few since the proposed language can punish an applicant for a single event that was corrected but perhaps for reasons beyond the applicant's control, may not have been corrected during the corrective action period. Commenter (48) explained that a Category 2 portfolio, no matter how large, cannot have a single finding which is unfair to those who have a significant Texas only portfolio under review and further maintained that an uncorrected event should rise to the level of penalty loss of the competitive score, but not any single corrected event, regardless if corrected within or outside the corrective action period, especially if developers who operate outside Texas are not subject to the same compliance review. Commenter (48) suggested this item be removed for the 2016 application cycle or modified to reflect one of the following to ensure a reasonable standard for competition:

> "(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category ~~2,~~ 3~~,~~ or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)"

> "(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of any uncorrected findings within the last 3 years ~~a category 2, 3, or 4 as determined~~ in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)"

With respect to subparagraph (A) under this scoring item, commenter (45) suggested the threshold percentage for the HUB or nonprofit partner participation be lowered from 80% for a combination of ownership interest, cash flow from operations and developer fee taken together to equal at least 50%, with no less than 5% in each category. Commenter (45) expressed that while some of these organizations have extensive experience, part of the purpose of the scoring item is to give more experience to organizations that have some but that still need partners.

STAFF RESPONSE: Staff has carefully considered the volume of concern and conflicting comment regarding this scoring item. While the previous participation history will continue to be considered during the allocation process, staff recommends that the scoring item be excluded from this Qualified Allocation Plan and reevaluated as the 2017 rules are developed.

12. §11.9(c)(2) and (c)(3) – Selection Criteria – Rent Levels of Tenants and Tenant Services (8), (45)

COMMENT SUMMARY: Commenter (45) suggested the additional points available to supportive housing developments under these two scoring items be removed on the basis that, by definition, these types of developments will require funding sources that will require the property serve particular populations which may result in additional units restricted at 30% AMI and/or provide additional services. Commenter (45) does not believe that in meeting the requirements associated with those funding sources, they should be allowed additional points under the QAP since the benefits of serving those populations are already realized through those sources. Commenter (45) recommended that perhaps only the highest scoring supportive housing development in any given region be allowed access to these additional points. As proposed, the QAP highly favors this type of development over those that serve general population or seniors.

Moreover, commenter (45) argued that with developers of supportive housing seeking additional concessions in the QAP and Rules, as well as Direct Loan NOFA's being developed, they do not believe statute explicitly states that this type of housing should be a primary purpose of the Department.

Commenter (8) asserted the proposed language for Rent Levels of Tenants fails to follow the legislative mandate by coupling rent levels with the status of the owner or other factors that could be more appropriate for another lower scoring aspect of the rule. Specifically, commenter (8) contends that the highest priority under this item is for those participating in the City of Houston's Permanent Supportive Housing program which is not an aspect of rent levels of tenants. Points that can be achieved that are based on additional factors that are already included in other lower scoring categories does not adhere to the plain language of statute, according to commenter (8). Moreover, given the statutory language, the legislature approved of lower rents; however, it is questionable as to whether the legislature intended for points to be given to developments that are increasing the rents of low income residents in order that even lower income residents would have lower rents, which the proposed language allows. According to commenter (8) the Department should reward the development that is actually bringing something to the project that does not cause some tenants to pay more than is necessary by obtaining project based rental assistance for the 30% AMGI which is essentially robbing Peter to pay Paul. Commenter (8) suggested the following revision to this item:

> "(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.
>
> (A) At least 20% of all low-income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 13 points.
>
> (B) At least 10% of all low-income units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and the TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 11 points.
>
> (C) At least 5% of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the

rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 7 points.

Commenter (8) further believed that a similar argument can be made to subsection (c)(1) of this item to only reward the development where the developer is subsidizing the tenants or has secured the long commitment from a third party government or private source to subsidize the extremely low income tenants without causing other low income tenants to pay more than is necessary for housing.

STAFF RESPONSE: In response to commenter (45), staff believes that the unique nature of supportive housing, including the higher level of services and deeper rent targeting cannot be adequately supported by a traditionally funded transaction. Supportive housing developments are structured in a manner that does not support debt. That is why they are able to sustain larger percentages of 30% AMGI units and more extensive services. The potential for these developments to score higher is offset by the difficult economics of the transaction. The scoring differential has been available in past years and has not disproportionately impacted the allocation of credits to Supportive Housing developments on a statewide basis, however staff is recommending several changes to limit this differential in combination with other scoring items. Staff will continue to monitor these numbers and may propose revisions in future QAPs if warranted based on the data.

In response to commenter (8), (45) suggestion regarding limitation of supportive housing developments, staff believes the changes proposed would have a significant impact on the effect of the overall scoring without providing a reasonable opportunity for public comment and, as a result, would not be considered a natural outgrowth of the rule.

Staff recommends no changes based on these comments.

13. §11.9(c)(4) – Selection Criteria – Opportunity Index (3), (4), (7), (20), (21), (25), (29), (30), (31), (32), (38), (39), (45), (48), (49), (50)

COMMENT SUMMARY: Commenter (3), (31), (36) requested the median Index 1 score in this scoring item be changed from 77 to 76 for consistency with the 2015 data released by TEA. Commenter (31), (36) further elaborated that, while in previous years the statewide median of 77 was applicable to both elementary and all schools combined, the 2015 data released reflecting a score of 76 was specific to the elementary school statewide median. The fact that this scoring item, according to commenter (31), (36) is directly tied to elementary schools, it justifies the modification to the score of 76. Moreover, commenter (3), (29), (30), (49) requested the poverty rate in this scoring item be increased to 20% for all areas outside of Region 11 where the poverty rate should remain at 35%. Commenter (3), (29), (30), (49) suggested that such small change will add approximately 4.3% more census tracts, which they asserted to still be first and second quartile census tracts, to that of high opportunity which will promote further de-concentration of awards. Furthermore, as asserted by commenter (3), (29), (30) this modification will help alleviate the issue that preservation properties are part of the poverty rate thus making their own communities non-competitive. Commenter (29) further added that in large urban areas a specific census tract may be experiencing an increase in income levels; however, it may take time for the decrease in poverty rate to be seen.

Commenter (30) indicated that while they agreed with the change providing opportunities in second quartile tracts, they do not agree that such areas should be a point less than the first quartile areas with the added requirement of the elementary school having received at least one distinction. Commenter (30) believed that if this requirement is to be met for second quartile areas, then such areas should have the same point value as the first quartile tracts. To achieve this, commenter (30) offered the following modification:

> "(i) The Development ~~Site~~ is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable.~~,~~ ~~and~~ If the Development Site is located in the top quartile, is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to ~~student achievement~~school; or if the Development is located in the second quartile, is in the attendance zone of an elementary school that has a Met Standard rating, achieved a 77 or greater on index 1, and has earned at least one distinction designation by TEA (7 points);
>
> (ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 77 or greater on index 1 of the performance index, related to student achievement~~, and has earned at least one distinction designation by TEA~~ (6 points);
>
> (iii) The Development Site is located in a census tract with income in the top ~~second~~ quartile of median household income for the county or MSA as applicable~~, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement~~ (5 points);
>
> ~~(iv) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or~~
>
> (iv) The Development Site is located in a census tract ~~with income~~ in the top two quartiles of median household income for the county or MSA as applicable (~~1~~3 points)."

Similarly, commenter (48) asserted that by adding a 6 point scoring item for an elementary school based on its one earned distinction essentially gives bonus points only to second quartile sites whereas top quartile sites are not able to get similar bonus points. The new scoring option does not, according to commenter (48), open new census tracts for competition because the existing scoring criteria still rewards sites with a 77 or greater rating based on quartile without the added bonus points only to second quartile sites. Commenter (48) stated the same bonus points should be allowed for both first and second quartile sites if the elementary school has at least one designation and recommended that for a site within a first quartile could achieve 8 points and a second quartile could achieve 6 points; otherwise, the points for one star of distinction should be removed. Commenter (48) expressed support for maintaining the minimum rating of 77 for this scoring item.

Commenter (50) expressed support for adding a point category for sites located in second quartile tracts with exceptionally well performing schools and believed that second quartile tracts provide equal opportunity to that of first quartile tracts, especially when the schools are exceptional.

Commenter (45) expressed concern over deletion of the sentence in subparagraph (C) of this section that addressed the issue of choice programs, and stated that in districts with these programs the district rating should be used. According to commenter (45) it is inappropriate to assume that the closest school is the one the students will most likely attend and that it is possible that a school that is closest might be across a major highway and not be the logical choice, with respect to either school rating or transportation. Commenter (45) suggested the following modification:

> "…In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating…"

Commenter (45) expressed opposition to the use of distinction designations by TEA because of the methodology behind the distinctions, which based on the TEA manual, are determined after schools are put in comparison groups with schools across the state and such groups can vary greatly in size. Commenter (45) believed this is not an accurate reflection of a school's general performance because the "worst of the best" might earn a distinction while the "best of the worst" might not. Commenter (45) maintained that the Opportunity Index is appropriately designed to compare one part of the MSA to another, not to compare a census tract in Spring to one in McAllen, and they believed using the distinction designation violates this concept. If a 6 point scoring option is desired by the Department, it could be achieved by introducing a new factor or simply compressing the scoring, not be arbitrarily adjusting the thresholds for either income, poverty rate, or school ratings and suggested that proximity to community assets, which has been presented as a priority by the Department, could be included in this scoring item without undermining the policy objective of the index itself. To achieve this, commenter (45) recommended one of the following options:

> "(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);
>
> (ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, and has achieved a 77 or greater on index 1 of the performance index, related to student achievement~~, and has earned at least one distinction designation by TEA~~ (6 points);
>
> (iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (4~~5~~ points);

(iv) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (2~~3~~ points).~~; or~~

~~(v) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).~~"

The other option, according to commenter (45) could be the following:

"(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and is within three miles of a full service grocery store, pharmacy, and urgent care facility (~~5~~6 points);

(iv) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(v) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point)."

Commenter (25) expressed that the points under this scoring item forces development in suburban neighborhoods that are not conducive to the target population. Specifically, commenter (25) indicated that in working with the homeless population, they incorporate the adjacent neighborhood in offering services and working with the local schools to provide tutoring. When forced to develop in suburban communities, commenter (25) believed the resources they are able to provide are being taken away from the most vulnerable citizens and therefore recommended that community revitalization points be weighed just as much as opportunity index points.

As it relates to the Rural Opportunity Index, commenter (3) recommended the following be added to clause (i) to provide clarification on "services specific to a senior population". Commenter (49) agreed and recommended "other senior appropriate services as evidenced by the applicant" also be added.

- "Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site;

- Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primary care doctor's offices that accept Medicaid/Medicare, ERs and Hospitals."

Commenter (45) disagreed with elderly developments having access to points for being in proximity to "services specific to a senior population" as well as being in proximity to a senior center and suggested deleting one or the other.

Commenter (7) requested deleting the point qualifiers for first and second quartiles for existing rural properties in the set-asides since they have fixed locations and cannot be moved and further requested a tiered point system for first and second quartiles and third and fourth quartiles.

With respect to the services identified in the scoring item, commenter (7) stated that USDA Rural Development does not permit the use of rent proceeds for on-site or off-site services; therefore, requiring such will create a financial challenge for the property. In lieu of the services, commenter (7) suggested that such developments be allowed to add upgrades such as accessibility, laundry room, community room or upgrades to unit amenities.

The proximity to the community assets in this scoring item should be increased from 1.5 miles to 3 miles according to commenter (7) to provide consideration for those existing units that cannot be moved.

Commenter (20) asserted there was an inconsistency with requiring an Index 1 score of 77 for the middle or high school in rural region 11 while §11.9(c)(5) relating to Educational Excellence requires an Index 1 score of 70. As a result, commenter (20) recommended the following modification to this scoring item:

> "(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.
>
> > (i) Except for an Elderly Limitation Development, the Development Site is located within the attendance zone (or in the case of a choice district the closest) of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B)~~;~~ (For Developments in Region 11, the middle school or high school must achieve an index 1 score of at least 70 to be eligible for these points); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must

be provided by the school district in order to qualify for points. For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);"

Commenter (4) expressed concern over the changes to Rural Opportunity Index, making it more difficult to obtain the points. Specifically, commenter (4) contended that there is no "choice" for a child to attend one school over another which implies that under subparagraph (B) there is no choice involved in attending a school that has an index 1 score of 77 or greater. Moreover, commenter (4) maintained that if this scoring item is about distances to commonly utilized or required facilities, and since a family does not have a choice in the rating of the school they may attend, the proposed language does not make sense. Commenter (4) asserted that the 2015 language regarding the Met Standard rating makes the most sense and has the most value to families in that the school the child will attend is close to the development.

Commenter (4) also stated the inconsistency with having two senior center-type scoring items worth various points – i.e. 3 points under clause (i) and 2 points under clause (v) of this subparagraph. Commenter (4) emphasized that an elderly application in a rural area that can achieve points for a day care center does not make sense considering they can at least use the school's grounds for walking or exercise. To address these concerns, commenter (4) recommended the changes as reflected below. Commenter (21) expressed similar objections to substituting proximity to senior services for schools in rural regions for elderly developments and further elaborated that schools are a key community asset, providing volunteer opportunities for seniors, open space for recreation, fitness, social interaction and places to gather, hold community meetings and even vote. Commenter (21) proposed the same modifications to that of commenter (4):

> "(i) ~~Except for an Elderly Limitation Development, the~~ The Development Site is located within the attendance zone (or in the case of a choice district the closest) and within 1.5 miles of an elementary, middle, or high school with a Met Standard rating~~that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points.~~ For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);"

Commenter (39) recommended that for rural areas, points and requirements for sites to be located within a first or second quartile census tract be removed and maintained that a large number of cities are located within a third or fourth quartile, surrounded by a first or second quartile census tract on the outskirts of town.

Commenter (32) recommended paragraph (A) be consistent with paragraph (B) under this scoring item by substituting "the Development Site has access to services specific to a senior population within 1 mile" for the "school attendance zone" criteria. As proposed, commenter (32) maintained that it encourages developers to substitute elderly-only developments for family developments in high opportunity areas with access to good schools.

Commenter (45) requested clarification regarding sites located in districts with choice programs and stated the proposed language indicates that the closest school, regardless of distance to the site, must have the index 1 score of 77 under clause (i); however, this seems inconsistent with the concept of the rural opportunity index which requires one threshold that does not involve proximity to the services or community assets and then a second criteria which does require such proximity. Commenter (45) believed this to be redundant considering the first threshold for points and further suggested that either the requirement for the points be proximity to the elementary school or in the attendance zone of a highly rated middle or high school.

Commenter (38) urged the Department to balance point incentives for investing in high opportunity areas and the preservation and rehabilitation of existing multifamily housing in a way that makes sense for Texas.

Commenter (91) recommended the following subparagraph be added to this scoring item:

> "(D) For At-Risk Developments, if the proposed Development Site is located within a 1.0 mile radius area containing jobs earning up to $3,333 of at least 10 times the number of HTC units as reported by the US Census On the Map, an Application may qualify to receive up to seven (7) points."

STAFF RESPONSE: As it relates to comments received on the **Urban Opportunity Index**, in response to commenter (3), (31), (36), the index 1 score of 77, since the inception of the scoring item, has been based on the statewide median of all schools, which has also been the statewide median for elementary schools over the past few years. While staff acknowledges the statewide median for elementary schools has been updated to reflect an index 1 score of 76, staff does not believe the score should be adjusted, since the statewide median for all schools remains at 77.

In response to commenters (3), (29), (30), (49) that recommended an increase to the poverty rate threshold to 20% in order to promote de-concentration of awards, staff believes that the current 15% maximum poverty rate continues to be appropriate. The 15% rate has not resulted in a concentration of awards in previous cycles, and it continues to support developments in high opportunity areas.

In response to commenters (30), (45) and (48), staff believes that a distinction designation indicates that students in the attendance zone of the elementary school will be able to access important educational opportunities, such that the scoring criteria is warranted.

In response to commenter (45), districts that have choice programs that allow students to attend higher performing schools do not necessarily provide transportation to such schools. As such, while a student can attend the school of their choice they are most likely to attend the school in their neighborhood. Sites near poor performing schools should not receive the benefit of a high performing district rating.

In response to commenters (45) and (20), the proposed changes to the scoring structure are of a magnitude that would require re-publication and a necessary opportunity for additional public comment.

In response to commenter (32) staff agrees that an Elderly Development should be able to either score points for proximity to a high performing school or access to services specific to seniors, staff makes the following change:

(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement; or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (7 points);

Staff appreciates the support expressed by commenter (50).

As it relates to the **Rural Opportunity Index**, in response to commenters (3) (45), and (49), staff believes that "services specific to a senior population" is appropriately descriptive, and that addition of the suggested language would create unnecessary limitation. Further, "services specific to a senior population" may provide in-home support or other types of services senior centers do not provide.

In response to commenter (7) the proposed changes to the scoring structure are of a magnitude that would require republication and an opportunity for additional public comment.

In response to commenter (20), staff believes that making the suggested change would create an inconsistency with points allowed under the Urban Opportunity Index.

In response to commenter (4), (45) districts that have choice programs that allow students to attend higher performing schools do not necessarily provide transportation to such schools. As such, while a student can attend the school of their choice they are most likely to attend the school in their neighborhood. Sites near poor performing schools should not receive the benefit of a high performing district rating. Staff believes the parenthetical regarding the closest choice district school is redundant with subparagraph (C) and therefore can be removed.

In response to commenter (4), staff believes that "services specific to a senior population" may provide in-home support or other types of services senior centers do not provide, and is therefore worthy of the additional point. Further, because Elderly Preference developments are required to accept families with children, the inclusion of proximity to licensed child care is appropriate. However to make the language consistent with the proposed Urban Opportunity Area language which allows Elderly Developments to either score points for proximity to a high performing school or access to services specific to seniors, staff makes the following change:

"(i) ~~Except for an Elderly Limitation Development, t~~The Development Site is located within the attendance zone ~~(or in the case of a choice district the closest)~~ of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B) or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);"

In response to commenters (32), (39) the proposed changes to the scoring structure are of a magnitude that would require republication and an opportunity for additional public comment.

In response to commenter (38) staff believes the proposed rules take into consideration preservation initiatives and provides incentives where appropriate.

In response to commenter (91) the suggested change would be a significant modification in numerous areas of the rules associated with the evaluation process not identified by the general comment expressed.

14. §11.9(c)(5) – Selection Criteria – Educational Excellence (1), (3), (4), (7), (11), (12), (13), (14), (15), (16), (17), (18), (23), (25), (31), (32), (45), (48), (49), (89)

COMMENT SUMMARY: Commenter (3) recommended the following changes to this scoring item indicating that while it is difficult to find sites where all three schools achieve the index 1 score of 77, this proposed modification would create more variation in scoring in at least achieving partial points.

> "(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); ~~or~~
>
> (B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 of at least 70 to be eligible for these points;~~.~~ (3 points) or
>
> (C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (2 points)

Commenter (7) suggested there be a consideration for acceptable mitigation for schools that have not achieved the Met Standard rating in rural areas and specifically suggested an approved work-out plan be allowed and worth 2 points.

Commenter (11), (12), (13), (14), (15), (16), (17), (18) recommended At-Risk developments with Choice Neighborhood funding be allowed points under this scoring item regardless of their actual school scores. Commenter (11), (12), (13), (14), (15), (16), (17), (18) asserted that in order to be designated a Choice Neighborhood, a housing authority must have demonstrated that the targeted community needs assistance in areas that include housing, education and social services and has developed a community drive transformation plan that addresses those needs. Moreover, the Choice Neighborhood Initiative is a partnership among several federal agencies that supports locally driven solutions for transforming distressed neighborhoods. Commenter (11), (12), (13), (14), (15), (16), (17), (18) suggested this scoring item be revised to allow applications that qualify under the At-Risk

set-aside, that have a nationally recognized educational initiative in place and/or receive funding from Choice Neighborhood receive 3 points, regardless of the school rankings and scores.

Commenter (25) recommended the points under this scoring item should not be limited to points under the opportunity index and that such change would allow supportive housing developers to continue to work in the urban core, collaborating with local communities to revive neighborhoods.

Commenter (4), (48) suggested that the 3 points allowed for a site that has all Met Standard schools effectively de-values a site that has all schools that are Met Standard and have an index 1 score of 77 or greater, which allows for 5 points. Commenter (4) stated that less than 8% of schools have an Improvement Required rating, with many of those schools being clustered in one district. Commenter (4) contended that points should not be awarded for a rating that has been achieved for 92% of all rated schools and that to keep this scoring item meaningful the following modification should be made:

> "(B) ~~The Development Site is within the attendance zone of an elementary school, a middle school, and a high school with a Met Standard rating~~ The Development Site is within the attendance zone of an elementary school and either a middle school or high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11) or within the attendance zone of a middle and high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11). (3 points)"

Commenter (48) recommended the following modifications to this scoring item to create a scoring benefit for high opportunity locations with 2 of 3 schools that have a 77 or better rating:

- (5 points) – all three schools (elementary, middle, and high school) met 77 (or 70 for Region 11 and 13);
- (3 points) – two of three schools (elementary, middle, and high school) met 77 (or 70 for Region 11 and 13);
- (1 point) – all three schools Met Standard.

Based on similar recommendations regarding the index 1 score of 76 to the Opportunity Index scoring item, commenter (31) recommended the index 1 score specific to elementary schools within this scoring item be modified to reflect the same. However, commenter (31) recommended the index 1 score for middle and high schools remain at 77 for this scoring item. Proposed modified language from commenter (31):

> "(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or"

Commenter (89) believed points under this scoring item should be awarded to charter schools that are being developed as part of a holistic approach to neighborhood revitalization. To qualify for the points the children living at the proposed development must be able to attend the charter school and that the district rating should be allowed to be used on the basis that the charter school may not yet offer and therefore not have data on all grades that will be in place when the development is placed in service.

Commenter (89) also expressed concern that senior developments are still eligible to receive 5 points under this scoring item which means they would forgo the 3 points available under Aging in Place and will likely not incorporate design and service features specific to the target population. As a result, senior developments will continue to be built in areas with good schools because they are considered more acceptable to those communities.

Commenter (45) expressed the same concern in this scoring item as in Opportunity Index over deletion of the sentence that addressed the issue of choice programs and suggested the modification below. Moreover, commenter (45) believed that using the district rating in cases with district-wide enrollment is more appropriate than using the rating of the nearest school since there is no guarantee that the tenants will attend the nearest school.

> "…In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating…"

Commenter (45) objected to awarding 3 points for developments located in the attendance zones of schools that only have a Met Standard rating on the basis that it is not in line with the concept of the scoring item and would only serve to severely dilute its impact. Commenter (45) recommended the following changes:

> "… An Application may qualify to receive up to ~~five (5)~~four (4) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, ~~meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined~~ by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (C) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating….
>
> > (A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. ~~a Met Standard rating and an Index 1 score of at least 77~~ For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (4~~5~~ points); or
> >
> > (B) The Development Site is within the attendance zone of an elementary school, and either a middle or high school with the appropriate rating. For Developments in Region 11, the middle or high school must achieve an index 1 score of at least 70 to be eligible for these points~~a middle school, and a high school with a Met Standard rating~~. (2~~3~~ points)

(C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points)."

Commenters (1), (23), (32), (49) all commented regarding Aging in Place points for Supportive Housing or single-room occupancy Developments. They implied a need for parity between developments choosing Aging in Place points and those electing Educational Excellence points and that selection of such points should be mutually exclusive. Commenter (45) also commented on the parity intent between Aging in Place points and Educational Excellence points in order to maintain scoring parity between Elderly and General Developments.

STAFF RESPONSE: In response to commenters (7), (11), (12), (13), (14), (15), (16), (17), and (18) staff believe that the Met Standard rating is an appropriate criterion for schools, as more than 94% of districts and more than 84% of campuses across the state have met this level. While mitigation efforts and other initiatives are to be applauded, there is no assurance that they will be successful within the relatively short period between application and occupancy of a development.

In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff has also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development. Staff will further be proposing an alternative two (2) points under Aging in Place for Supportive Housing Developments which are also HOPA Elderly Limitation restricted.

In response to commenter (3), (4), (45), (48) staff agrees that there should be more levels of differentiation for distinction by location. Staff proposes the following change:

> "(5) Educational Excellence. Except for Supportive Housing Developments, an Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined by the Texas Education Agency. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have

the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points, or 2 points for a Supportive Housing Development); ~~or~~

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points; (3 points, or 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (1 point)"

In response to commenter (11), (12), (13), (14), (15), (16), (17), (18) staff recognizes that the initiatives create potential for future improvement to the schools, however the purpose of this scoring criteria is to recognize the current rating of schools.

15. §11.9(c)(6) – Selection Criteria – Underserved Area (3), (4), (5), (7), (20), (21), (28), (31), (32), (33), (34), (36), (40), (45), (48), (49), (50)

COMMENT SUMMARY: Commenter (4) expressed support under the colonia option within this scoring item and further indicated such changes help to remove the ambiguity and subjectivity. Commenter (32) expressed similar support and indicated that the proposed changes strike an appropriate balance between giving preference to high opportunity areas and providing infrastructure needs of colonias.

With respect to the economically distressed areas ("EDA") option within this scoring item, commenter (4) proposed that this remain at 2 points (instead of 1 point) for those developments in EDA areas that do not have an existing HTC development.

Commenter (3) proposed the following revisions to this scoring item; while commenter (31), (36) expressed similar changes to subparagraph (C):

"(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~for a Development that~~which remains an active tax credit development (2 points);
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~for a Development that~~which remains an active tax credit development serving the same Target Population (2 points);
(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type~~for a Development that~~ which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);"

Commenter (4) expressed support for the current language under subparagraph (C) and maintained that there is already an option in this scoring item for a census tract that does not have a same-population development in 10 years.

Commenter (4) expressed support for subparagraph (D) relating to rural areas underserved by HTC developments; specifically that there are fewer rural towns with even fewer census tract options compared to urban areas.

Commenter (5) recommended the option under subparagraph (E) be deleted on the basis that it offers no benefit and its real effect is that it makes traditional underserved areas lose part of its advantage. Commenter (5) asserted the option is too easy since most census tracts would fall into this category thereby creating a free point. Commenter (32) believed that a lack of affordable housing should not qualify for a point in scoring and further illustrated that the 50 census tracts with zero housing units of any type would qualify for these points. Commenter (32) further recommended that this point should only be available to those proposing new construction that also qualifies under the Opportunity Index. Commenter (33) asserted that this scoring option puts a development in a census tract with no existing tax credits at a one point disadvantage. Based on supplemental information provided by commenter (33), census tracts with properties awarded in 1994, 1998 and 2001 would have a one point advantage to the surrounding census tracts that have none which does not, according to commenter (33) meet the spirit of an underserved area. Commenter (33) provided the following modification:

"(E) A ~~census tract~~ Place, or if outside the boundaries of any Place, a County that currently does not have more than one (1) ~~that has not received a~~ competitive tax credit allocation or a 4 percent non-competitive tax credit allocation awarded prior to 2001 (15 years)~~for a Development that remains an active tax credit development serving the same Target Population within the past 10 years~~ (1 point);"

On the contrary, commenter (4), (21) expressed support for this option and commenter (21) recommended that, for consistency, the "year" column on the property inventory be used which in some instances is the year following the date in the "board approval" column.

Commenter (5), (33) stated that subparagraph (F) is too vague and broad in its intentions because 5 miles is significant and too wide, effectively creating a 10 mile circle around a development. Commenter (5) asserted that if the incentive is to be in an area of significant new growth then the incentive should be to be in the area, and thus recommended that the distance limitation be within one or two miles. Commenter (32) indicated that a 5-mile radius in an urban area would cover

neighborhoods of a wide variety of quality and a 50-person facility would have a negligible impact on the economic opportunities available to the area's population. In smaller areas, a 50-person facility may represent a notable change in local conditions; however, commenter (32) expressed an opposition to the state choosing the placement of 30-year housing infrastructure by chasing after the recent employment activity of a single employer. Commenter (32) further added that other than wage level, there is no restriction on the type of business that qualifies a development for this point, and of additional concern is the lack of zoning in certain areas which could incentivize development near businesses unsuitable for a residential area. Commenter (32), (33) recommended removing subparagraph (F) from this scoring item and commenter (33) suggested that this concept is better suited for community revitalization criteria once there is a consensus on definitive support material.

Commenter (3), (5), (33), (45), (48) requested clarification regarding what documentation would be required to substantiate points under subparagraph (F) of this scoring item and if a definitive method by which to document compliance the provision cannot be identified then commenter (5), (33), (34), (40), (45), (48) suggested subparagraph (F) be deleted. Commenter (28) similarly expressed that a clear, reliable third party source needs to be identified for obtaining the data relating to subparagraph (F) and further stated that a letter from a city/county official can be subjective and a strong case for administrative review. Commenter (4), (31), (36) also recommended this item be deleted since there does not seem to be a consistent objective data source to document the points and commenter (4) proposed that staff and the development community explore SBA and State incentive programs for consideration in the 2017 QAP.

Commenter (7), (20) suggested this item be expanded to include business expansion and addition of employees and space as reflected in the following modification proposed by commenter (20):

> "(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce or relocated to the area with an existing workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or"

Commenter (7) further added that such change can be documented with construction plans, or site acquisition and verification of business hires can be provided by the HR department of the expanding business. Commenter (3), (49) suggested the following modification as it relates to leased space:

> "(F) Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and/or additional) office space and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or"

Commenter (21) asserted that the proposed language makes it impossible to verify, questioned whether expansion would count as a new facility, along with new buildings or an addition and further stated that there was no way to verify salary data. Commenter (21) offered the following modification to this item and further added that if such modification is not used then the item should be removed:

> "(F) ~~Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the~~

~~Development is located~~ A site with a 10:1 or higher ratio of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units, as evidenced by the U.S. Census Bureau's on the map tool (1 point); or"

Commenter (50) expressed support for subparagraph (F) and further recommended the U.S. Census Bureau's On the Map tool be used to substantiate the scoring item.

Commenter (4) indicated there was not a consistent data source to use for subparagraph (G) and that considering the fact that some census tracts changed from 2000 to 2010 there would not data available for some census tracts prior to the 2010 American Communities Survey ("ACS") data. Commenter (4), (34), (40) proposed that this subparagraph be deleted until more research can be done to identify a consistent data source, unless, according to commenter (34), the Department intends to publish such data within the Site Demographics Report. Commenter (28) inquired whether the Department will require use of ACS data and if so, which data specifically. Commenter (21) stated that data is only available at the Place level and not the census tract level and further stated that by 2016 the 2000-2010 data is outdated. Commenter (21) indicated that the newest data sources that come closes to a 10-year spread is 2013-2010 ACS data since 2003 numbers are not available; therefore, commenter (21) recommended the following modification:

"(G) A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the ~~county~~Place population growth over the past ~~10~~3 years ~~provided the census tract does not comprise more than 50% of the county~~as evidenced by American Community Survey 2010 to 2013 data (1 point)."

Commenter (31), (36) also indicated that accurate information related to growth is not available at the census tract level and stated that Place level is a more appropriate indication of growth for a community as a whole and therefore recommended the following modification:

"(G) A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years ~~provided the census tract does not comprise more than 50% of the county~~ (1 point)."

Commenter (40) recommended that should items (F) and (G) remain in the QAP then the maximum point value for this item should be increased to 4 points on the basis that areas that were truly underserved, for example, a Place that has never had a tax credit development that also has a new employment center and has experienced exceptional growth could achieve the maximum points.

Commenter (32) suggested subparagraph (G) be modified to reflect areas that are rapidly growing for the better, based on census tract poverty, census tract income and neighborhood land values relative to a Place (Appraisal District) in addition to population growth. Commenter (32) recommended such growth points be awarded to those developments in areas that reflect a statistically significant improvement on two of the three aforementioned metrics over the decennial measurement period. Commenter (32) questioned whether the 120% growth rate is a meaningful benchmark and requested clarification on how it would be applied. Specifically, for a county with a 1% growth rate, 120% of the county growth rate is 1.2%. A census tract with a 1.21% growth rate, according to commenter (32), is hardly deserving of points for being in an underserved area. Commenter (32) recommended that a floor growth rate be included, should this option remain under this scoring item. Commenter (32) suggested ranking tracts by growth rate by the state service region and awarding these points to the top 10% tracts in each region, provided that they

also meet the poverty, income and land value metrics as previously described and have a large enough starting population base to make the percentage, for example 3,000 which is about 75th percentile tract in the state.

Commenter (45) disagreed that high growth areas are equated with underserved areas but rather believed that an area is underserved with respect to the amount of affordable housing available. Commenter (45) contended that it's possible to have significant growth and also have a high concentration of affordable housing. Furthermore, high growth areas would already be more attractive to developers and unnecessary to incentivize further. Commenter (45) believed that high growth areas inside large MSAs that lack affordable housing should be incentivized and suggested that the same criteria used for rural developments be used for urban developments. Commenter (45) indicated that the administration of carrying out the proposed language will be difficult and would result in multiple appeals and third party requests for administrative deficiencies. Commenter (45) suggested the following modifications to this scoring item:

> "(A) The Development Site is located wholly or partially within the boundaries of a colonia… (2 points);
> (B) An Economically Distressed Area (1 point);
> (C) A census tract~~Place, or if outside of the boundaries of any Place, a county~~ that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);
> ~~(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);~~
> (~~E~~D) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point);
> ~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or~~
> ~~(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point)~~."

Commenter (50) expressed support for subparagraph (G) of this scoring item.

STAFF RESPONSE:

Staff appreciates the support expressed by commenter (4), (32) regarding colonia option. In response to commenter (4) on increasing the points associated with EDA's, staff believes that while the Department is required by statute to provide a point incentive for an EDA, increasing the point value further does not align with the goal of producing housing in high opportunity areas.

In response to those commenters requesting option (C) be modified to consider those developments that are of the same population type, staff agrees and has made the change as recommended for consistency with options (D) and (E).

In response to the varying comments associated with options (F) and (G) relating to job growth and population growth, staff notes that these were included in the draft in response to public comment in September. After reviewing the comments provided and performing its own research into the options, staff recommends removing these from consideration under this scoring item. While it may be worth pursuing in future rule-making, staff has not been able identify a consistent, reliable data set regarding an appropriate distance, total number of jobs, or percentage of population growth in order to retain the scoring item for the 2016 application cycle.

16. §11.9(c)(7) – Selection Criteria – Tenant Populations with Special Housing Needs (3), (4), (7), (19), (21), (27), (28), (30), (31), (33), (36), (41), (45), (52), (53), (54), (92)

COMMENT SUMMARY: Commenter (3), (31), (33), (36), (45), (92) requested subparagraph (A) under this scoring item that allows points for placing 811 units in existing developments be deleted with commenter (3), (33), (36), (92) further asserting that because a large percentage of developers will not be able to qualify for the points it creates an unfair competitive advantage for those with a disproportionate number of developments that would not qualify. Commenter (31), (45) asserted that this scoring item results in providing a competitive advantage to some within the application round based on a factor unrelated to the development being proposed within the current application. Similarly, commenter (7) recommend subparagraph (A) be removed for rural USDA properties on the basis that it only serves to reward developers with urban properties who convert to 811 units. Commenter (7) further asserted that when a workable policy to accommodate the 811 funds is developed by the Department, it should not further penalize the preservation of USDA units. Commenter (28), (52), (92) asserted the points allowed for existing developments to include 811 units is anti-competitive and exclusionary, sacrifices the integrity of the program and will prevent developers that lack such a portfolio from competing and will further restrict new developers from entering the industry. Commenter (92) further stated that only 7 regions would qualify for the 811 units thereby leaving the 19 non-811 regions unable to compete which creates a privileged group of developers to dominate all regions in the state. According to commenter (92) such treatment fails to treat developers in all regions equally.

Commenter (33), (52) suggested this scoring item be modified in order to give all developers equal access to the same scoring items or that it be a threshold requirement associated with the 4% HTC program where the developments are larger and usually located in areas where services are more readily available for 811 tenants. Commenter (28) expressed a similar recommendation but also offered that for 4% HTC applications, 10% of the total units in a qualified development be the minimum requirement. Commenter (30), (33) also suggested 811 units be a 4%HTC threshold requirement utilizing a tiered approach based on the number of the total number of units – i.e. 100 units or less must commit 10 Section 811 units; 101-200 units must commit 20 units, 201-300 or more units must commit 30 Section 811 units. Commenter (33) also proposed that the Department propose a NOFA to owners with eligible properties a TCAP grant of $150,000 for commitment (15) 811 eligible units which can further be limited to a certain number of developments. Commenter (28) further added that should the option to include 811 units under the 4% HTC program not be possible for the 2016 application cycle, it should be included in 2017 to work with the 9% application cycle.

Commenter (19), (53), (54) expressed support for the incentive for 811 units to be placed into existing developments which is an excellent way to increase the available housing units now instead of waiting 2 to 3 years for new construction projects to be completed. According to commenter (54), there were 17 properties (a mix of both new and existing developments) that chose to set aside

811 units, which illustrates the need for more developers to participate in the program. Commenter (19) also suggested that other incentives such as increasing developer fees to 20% or shortening extended use periods by 5 years be considered as well.

Commenter (41) stated that Corpus Christi has an extremely high unmet need for affordable, accessible, integrated rental housing for people with disabilities and others below 30% AMI. Commenter (41) further requested that the 811 program be available in Corpus Christi so that the needs of their community are met, specifically, those individuals on SSI who are unable to relocate from institutions and those who are homeless or at risk of homelessness.

Commenter (27) determined that only 43% of the Department's inventory would be eligible for 811 vouchers without taking into account the developments located in the floodplain which would decrease the number of qualifying developments. Commenter (27) stated that considering the importance of tie-breakers in determining awards, those developers without existing developments that would qualify are at a disadvantage and has the ability to put a number of developers out of business for 2016. Commenter (27) requested subparagraph (A) be modified to allow 2 points to be achieved instead of the proposed 3 points.

Commenter (30) questioned why the point values associated with this scoring item changed over the previous year when the path by which to receive the points has not changed. Commenter (30) expressed that creating an unfair playing field is bad policy and requested subparagraph (A) be removed from this scoring item.

Commenter (21) stated that the proposed language results in rural developers who do not have any urban units being disadvantaged by one point and recommend the following revision:

> "(A) Applications <u>in Urban Regions</u> may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program…"

Commenter (4) asserted that subparagraph (A) penalizes new developers and developers that lack the portfolio that would meet the 811 requirements and further suggested that there be an incentive for developers with qualifying properties that does not involve a 1 point advantage. To achieve this, commenter (4) recommended that all options under this scoring item be modified to 3 points and modify subparagraph A to reflect the following as an incentive:

> "(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. <u>Applications electing this subparagraph may request a LURA amendment with no fee to reduce the Extended Affordability Period by 5 years for the existing Development participating in Section 811 per this subsection</u>"

Commenter (45) expressed concern that those applicants who may qualify for these points may not necessarily have good compliance histories and did not believe that placing 811 units in existing developments will not necessarily deliver the units much sooner than it would if applicants were only required to place the 811 units in the developments proposed in the 2016 application cycle. Commenter (45) recommended the option (A) be removed but alternatively suggested the following modifications:

> "(A) Applications may qualify for three (3) points if evidence is provided in the Application that a Memorandum of Understanding ("MOU") or other appropriate document has been fully executed by the Department and Applicant (or Affiliate of the Applicant) ~~a determination by the Department of approval is submitted in the Application~~ indicating participation of an existing Development~~'s~~ in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the portfolio of the Applicant must not have compliance history of a category 2, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation, and the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application."

STAFF RESPONSE: This item was one of the top items receiving significant comment and while the majority of comment was against inclusion of the entire item, the only significant change from last year's rule was the expansion of allowing owners of existing developments to add 811 units to those developments. In order to expedite the impact of this expansion of the scoring item, an additional point was proposed in the draft QAP. Reducing the proposed three points for the option in (7)(A) to two points would continue to allow for the expansion of this scoring item to attract owners with existing available units without giving them an undue competitive advantage since all new applicants could choose the two points under (7)(C). Removing the item altogether would take away an effective tool utilized last year to create more targeted affordability.

In response to commenter (41) staff agrees and has modified the item to include the Corpus Christi MSA.

17. §11.9(c)(8) – Selection Criteria – Aging in Place (1), (3), (7), (9), (21), (23), (32), (36), (45), (49), (50), (51)

COMMENT SUMMARY: Commenter (1), (23) suggested an alternative for supportive housing, in line with the this scoring item and further stated that similar to that of Aging in Place developments, the quality of nearby schools has no bearing on the suitability of a site for single room occupancy supportive housing where no children live at the property. The requirement for high performing schools presents an unnecessary hurdle because those residing in SRO developments do not have school aged children; therefore, commenter (1), (23), (32) recommended the following:

> "(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development or a Supportive Housing Single Room Occupancy Development may qualify to

receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)."

Commenter (49) recommended similar changes so that such developments could be eligible for points under this scoring item in lieu of Educational Excellence on the premise that such households without children do not house school age children and schools are not a resource for this very vulnerable population.

"(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development and Supportive Housing that serves households without children (100%) 1 bedroom and/or studios) may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)."

Commenter (3), (50) requested this scoring item be modified to reflect the following, with commenter (50) further stated that the recommended language would better serve the target population considering that many senior residents are not in wheelchairs. Moreover, commenter (50) expressed concern that 100% accessible units would be cost prohibitive and difficult to market due to the institutional feel it would create.

"(A) ~~All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points)~~In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):~~.~~

(i) "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms;

(ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;

(iii) Chair height (17-19") toilets in all bathrooms; and

(iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length.

(B) The Property will employ a full-time resident services coordinator on site for the duration of the Compliance Period~~ and Extended Use Period~~. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (~~1~~2 points):

(i) a minimum of 16 hours per week for Developments of 80~~79~~ Units or less; ~~and~~

(ii) a minimum of 24 hours per week for Developments of 81 to 120 units; and

(iii) a minimum of 32 hours for Developments in excess of ~~80~~121 Units~~ or more~~."

Commenter (49) requested similar modifications, with the following slight variation regarding weekly hours for the resident services provision. Commenter (49) also noted that in order to comply with HB 3311 creating point parity, the maximum score under this item should be increased to 5 points to be equal with Educational Excellence.

> "(i) a minimum of 16 hours per week for Developments of 80~~79~~ Units or less; and
> (ii) a minimum of 32 hours for Developments of ~~80~~81 Units or more."

Commenter (7) stated that it is not possible to adapt all existing units in a USDA 515, 514/516 property to full accessibility and further asserted that not all residents want an adapted unit, they are difficult to rent to residents that do not require such accommodations. Commenter (7) recommended the requirement for full accessibility be removed and should just continue to be made where reasonable. With respect to the full-time resident services coordinator requirement under this scoring item, commenter (7) recommended it be deleted as well on the basis that USDA does not allow rent proceeds to be used for such services. As an alternative, commenter (7) recommended the language be modified to allow the property to provide appropriate services for elderly residents with at least one event per month. Moreover, commenter (7) recommended that adding upgrades to the property, including accessibility, laundry room or community room, or upgrades to unit amenities be considered a replacement point category.

Commenter (51) expressed support for the inclusion of the onsite service coordinator but indicated concerns that the effectiveness of the service coordinator would be diminished if the person is part of the property management team; therefore, clarification was requested to help ensure the effectiveness of the service coordinator.

Commenter (9) expressed concern over the cost associated with converting 100% of the units in existing properties and stated the minimum to do so is approximately $10,000 - $15,000 for a full ADA conversion which would take funds away from other much needed rehab. Moreover, according to commenter (9) it is physically impossible to make the space in the bathrooms to meet the standards. As an alternative, commenter (9) recommended this item be modified to require an additional 5% of the total units be converted to the ADA standards. This would include lower cabinets, roll-in showers, etc. and would be in addition to the already required 5%. Moreover, commenter (9) suggested a requirement that 50% of the bathtubs be converted to roll-in showers. These changes, according to commenter (9) would be a financially better use of HTC funds and would better meet the needs and wants more accurately.

Commenter (21) recommended the following revision to this scoring item which would still achieve a policy that would allow individuals to age in place gracefully and with dignity:

> "(A) ~~All~~Fifty (50) percent of the Units are designed to be fully ~~accessible~~adaptable (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points)."

Commenter (36) recommended the following modifications to this scoring item based on concerns over the marketing and cost implications of developments designed to be 100% fully accessible:

> "(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and ~~All Units are designed to be fully accessible (for~~

both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities") the Applicant will build 50% of the units with adaptable design features as specified in 24 CFR 100.205(c)(1)-(3). (2 points)."

Commenter (45) disagreed with the addition of this scoring item on the basis that, while it is meant to create parity with the educational excellence scoring criteria for elderly developments, considering the new definition for elderly development, it is quite possible that such tenants would have children therefore being in the attendance zones of high quality schools would definitely benefit them. Moreover, even if the tenants do not have children, high performing schools is one of many indicators of a high quality neighborhood in general. In terms of competing for sites, if the Department believes there should be a path by which elderly developments compete for credits, commenter (45) suggested that it be driven by location, similar to the Educational Excellence scoring item. While the location of a development is a known fact at the time of application, a commitment to develop accessible units and provide services is in reality an unknown. Commenter (45) further emphasized that it's possible for an applicant to fail to meet these requirements which in this case would mean having denied credits to an applicant that was clearly already meeting the equivalent requirement. Commenter (45) recommended this scoring item be removed.

STAFF RESPONSE: The proposed rule allows an elderly development to choose to be in a location with Educational Excellence or provide for Aging in Place but not both. This allows Elderly Developments to have greater flexibility in location for developments that could exclude families. However, some elderly developments include or allow for families with children which would benefit from being in attendance zones of high quality schools. Similarly Supportive Housing Developments cannot exclude families with children (unless the development is qualified to do so under Housing for Older Persons Act "HOPA") and some types of Supportive Housing, such as those targeting single parents would also benefit from being in attendance zones of high quality schools. Staff agrees that the maximum points for Educational Excellence and Aging in Place should be equivalent at five points. Staff agrees that a reduction in the intensity of accessibility of Aging in Place features would make this option more achievable. Staff also believes the provision for a service coordinator should be simplified and proposes the following changes. In addition, staff believes Supportive Housing Developments which serve Elderly Limitation restricted households should also be able to achieve scoring parity for Aging in Place points with Supportive Housing Developments serving the general population which receive Educational Excellence points.

In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff has also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development. Staff further proposes an alternative two (2) points under Aging in Place for Supportive Housing Developments which are also HOPA Elderly Limitation restricted.

Staff proposes the following change:

"(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development may qualify to receive up to ~~three (3)~~five (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). An Application for a Supportive Housing Development may qualify to

receive up to two (2) points under subparagraph (A) only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) ~~All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points)~~In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):~~.~~

(i) "Walk-in" (also known as roll-in) showers of at least 30" x 60" in at least one bathroom in each unit;

(ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;

(iii) Chair or seat height (17-19") toilets in all bathrooms; and

(iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length.

(B) The Property will employ a ~~full-time~~dedicated resident services coordinator on site for the duration of the ~~Compliance Period and Extended Use Period~~Affordability Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, ~~full-time~~ dedicated is defined as ~~follows~~ an employee that is reasonably available exclusively for service coordination to work with residents during normal business hours at posted times(~~1~~2 points):

~~(i) a minimum of 16 hours per week for Developments of 79 Units or less; and~~
~~(ii) a minimum of 32 hours for Developments of 80 Units or more.~~"

18. §11.9(c)(9) – Selection Criteria – Proximity to Important Services (3), (5), (7), (24), (30), (39), (43), (44), (45), (48)

COMMENT SUMMARY: Commenter (3), (24), (30), (43), (44) requested the radius for developments in rural areas be increased to 3 miles further indicating that such residents are reliant on their cars and these services are on the outskirts of town near more major roadways. Commenter (5) recommended this scoring item be modified to increase the distance to 3 miles of a full service grocery store, a pharmacy and a medical office or urgent care facility, including hospitals. According to commenter (5) such change would help incentivize development and will keep the point item hard to obtain but not arbitrarily limit to one mile. Commenter (24), (43), (44) additionally suggested the distance to these services for urban development's should be increased to a 1.5 mile radius which would help developers find land large enough to support a multifamily development, where land will be less expensive and there will be less opportunity for opposition to new multifamily housing.

Commenter (7) asserted this scoring item needs to be further defined based on the inability for an existing property to be relocated in order to achieve the Department's new construction goals and recommended there be a focus on priorities and points for existing developments under a separate scoring item.

Commenter (39) asserted that proximity to a grocery store and pharmacy have little to no effect on the demand for housing and recommended this scoring item be deleted. Commenter (45) mentioned that the Remedial Plan called for the removal of all development location incentive criteria, outside of the opportunity index, educational excellence and those otherwise mandated by statute or federal law. The addition of this location specific scoring item, according to commenter (45) could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index, and recommended it be removed.

Commenter (48) recommended proximity to an urgent care facility be included as a third option under this scoring item on the basis that having 2 of 3 important services seems reasonable and allows many new sites to be competitive. Commenter (48) further added that while a one mile radius for most urban locations may seem appropriate; however, most top quartile locations where land is available for development have full service grocery stores outside of a mile, but inside a 2 mile radius

STAFF RESPONSE: Staff agrees with commenter (3), (24), (30), (43), (44) in increasing the distance for rural areas to 3 miles and to 1.5 miles for urban areas in response to commenter (24), (43), (44) and has made the changes accordingly. In response to commenter (39) inclusion of these items is not an issue of demand but rather ensuring there is access to these important services. In response to commenter (45) staff does not agree with the commenter that proximity to these services is inconsistent with the objectives of higher opportunity sites and more de-concentration.

19. §11.9(d)(1) – Selection Criteria – Local Government Support (2), (26), (32)

COMMENT SUMMARY: Commenter (26) asserted that the Department has discretion in defining the terms upon which the points under this scoring item would be awarded and indicated that the segregative effect could be lessened by conditioning the award of positive and negative points based on a statement from the municipality of reasons for the opposition and provide the developer with an opportunity to respond to the opposition.

Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field.

> "(A) Within a municipality, the Application will receive or sustain:
>
> > (i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; ~~or~~
> >
> > (ii) ~~fourteen (14) points~~ a deduction of seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes ~~has no objection to~~ the Application or Development; ~~.~~
> >
> > (iii) if the Governing Body of that municipality elects its members from single-member districts, an addition of ten (10) points for a letter of support from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development: or

(iv) if the Governing of that municipality elects its members from single-member districts, a deduction of ten (10) points for a letter of opposition from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application ~~may~~shall receive or lose points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph as indicated:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) a deduction of eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; or~~seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and~~

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) a deduction of eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development. ~~seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development~~.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, an Application or Development shall receive or sustain:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) a deduction of (17) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development~~fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development~~."

Commenter (32) expressed support regarding the modification to this scoring item that does not allow letters to be changed or withdrawn once submitted to the Department.

STAFF RESPONSE: The structure of the rule has been developed in a manner to achieve the clear purpose of the statutory scoring item and the changes requested by the commenter may conflict with statute. Moreover, they are significant substantive changes from what was proposed and could not be accomplished without re-publication for public comment.

Staff recommends no change based on these comments.

20. §11.9(d)(2) – Selection Criteria – Commitment of Development Funding by a Local Political Subdivision (22), (34)

COMMENT SUMMARY: Commenter (22) suggested clarification regarding whether a development located in an ETJ should look to the city or county for funding. Commenter (34) requested this item be modified to include language from similar scoring items in that "once a resolution is submitted to the Department, it may not be changed or withdrawn."

STAFF RESPONSE: In response to commenter (22) either the city or county can provide the documentation. In response to commenter (34) staff agrees and has modified the scoring item accordingly.

21. §11.9(d)(4) – Selection Criteria – Quantifiable Community Participation (2), (32), (63)

COMMENT SUMMARY: Commenter (32) expressed support regarding the modification to this scoring item that does not allow letters to be changed or withdrawn once submitted to the Department. Commenter (32) further indicated that the Department's process for registering neighborhood associations is unnecessary and duplicative of the functions of the secretary of state and the county. This process, according to commenter (32), allows groups as mall as two people to have a nine-point impact on an application and is therefore an impediment to fair housing choices and conflicts with the State's commitment to reduce NIMBYism as outlined in the State of Texas Plan for Fair Housing Choice: Analysis of Impediments.

Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field.

> "(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application shall~~may~~ qualify to receive, or have deducted, as appropriate, eight (8) ~~for up to nine (9)~~ points for written statements from a Neighborhood Organization or a Home Owner Association (as established by Texas Property Code, Title 11, Chapter 209, known as the 'Texas Residential Property Owners Act'). In order for the statement to qualify for review, the Neighborhood Organization or Home Owner Association must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site or be within one linear mile from an edge of the Development's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary. In addition, the Neighborhood Organization or Home Owner Association must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round ~~with the Department~~ by submitting documentation (such as evidence of board meetings, bylaws, etc.) not later than 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's or Home Owner Association's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization or association;

(ii) certification that the boundaries of the Neighborhood Organization, or Home Owner Association, contain the Development Site or be within one linear mile from an edge of the Development Site's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary and that the Neighborhood Organization or Home Owner Association meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, or Home Owner Association, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization or Home Owner Association consists of persons residing or owning real property within the boundaries of the Neighborhood Organization or Home Owner Association; and

(v) an explicit expression of support, or opposition~~, or neutrality~~. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the Quantifiable Community Participation (QCP) Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive or lose points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for or against an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

~~(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;~~

(i~~i~~) eight (8) points for explicitly stated support from a Neighborhood Organization or Home Owner Association; or

(ii~~i~~) a deduction of eight (8) points for explicitly stated opposition from a Neighborhood Organization or Home Owner Association. ~~six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;~~

~~(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;~~

~~(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or~~

~~(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.~~"

Commenter (63) requested that proximity to developments be taken into consideration and that Home Owner Associations as well as Neighborhood Associations within one linear mile of proposed developments be allowed a voice.

STAFF RESPONSE: in response to commenter (32) staff agrees that the Department's process for registering Neighborhood Associations is duplicative and unnecessary and recommends removing the reference (includes the Department).

In response to commenter (2) staff believes that the proposed rule comports with the express statutory requirements and recommends no change based on this comment.

In response to commenter (63), the legislature identified neighborhood organizations which could impact the score of a development by including those boundaries contain the development site. Staff recommends no change based on this comment

22. §11.9(d)(5) – Selection Criteria – Community Support from State Representative (2), (3), (26), (32), (42)

COMMENT SUMMARY: Commenter (3) recommended the point value associated with these letters be modified to reflect +4 points for support, 0 points for neutrality and -4 points for letters of opposition. The justification provided by commenter (3) stated that reducing the point range is still consistent with the legislative intent of ranking it the lowest point category under statute.

Commenter (32) expressed concern that the proposed language is in conflict with the statutory language outlining the priority of the support letters, which ranks the priority, not the scoring and that the current 16 point spread between the +8 and -8 points gives those letters priority above neighborhood organizations. Commenter (32) recommended that positive letters should be worth 6 points and negative letters worth -2 points. In reducing the spread between positive and negative letters to 8 points, it would still comply with the statutory language.

Commenter (26), (32) asserted that the Department has discretion in defining the terms upon which the points under this scoring item would be awarded and indicated that the segregative effect could be lessened by conditioning the award of positive and negative points based on a statement from the State Representative of reasons for the opposition and provide the developer with an opportunity to respond to the opposition.

Commenter (2) recommended the following changes to this scoring item:

> "(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications shall~~may~~ receive ~~up to~~ eight (8) points or have deducted ~~up to~~ eight (8) points for this scoring item. To qualify under this paragraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly ~~state~~express support for, or opposition to, the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters, or letters that do not specifically refer to the Development, or which fail to specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter."

Commenter (42) expressed concern regarding this scoring item on the basis that fair housing impediments and isolation of important constituents will result in cases where the state representative refuses to support housing for farmworkers; therefore, this scoring item should be eliminated or given other opportunity to cure so that housing is not denied for important constituents.

STAFF RESPONSE: In response to commenters (3), (32) staff believes that compressing the points associated with the letters conflicts with priorities created by statute, as established by the legislature and, in response to commenter (32) such priority is established in the score attributed to each of the scoring items. Moreover, the changes proposed by commenters (3), (32) would require re-publication and a necessary opportunity for additional public comment.

In response to commenter (2) the plain language of statute does not limit the possibility of assigning varying point values associated with the letters even if no such distinction is anticipated.

In response to commenter (42) this scoring item is a statutory requirement and therefore not one that staff can eliminate in the rule.

Staff recommends no changes based on these commenters.

23. §11.9(d)(6) – Selection Criteria – Input from Community Organizations (2)

COMMENT SUMMARY: Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field.

> "(6) Input from Civic and Community Organizations. (§2306.6725(a)(2))Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or Home Owner Association or be within one linear mile from an edge of the Development's boundary to an edge of a qualifying Neighborhood Organization or Home Owner Association~~,~~ then, in order to ascertain if there is community support or opposition, an Application shall~~may~~ receive ~~up to~~ four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. ~~No more than~~ Four~~four~~ (4) points will be awarded for letters in support, or deducted for letters in opposition, as applicable, under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. ~~Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.~~
>
> (A) An Application shall~~may~~ receive two (2) points for each letter of support, and shall have deducted two (2) points for each letter of opposition submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support or opposition must identify the specific Development and must ~~state~~express support of, or opposition to, the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole

or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support or opposition from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points or have points deducted, as the case might be. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application ~~may~~shall receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application ~~may~~shall receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site."

STAFF RESPONSE: In response to commenter (2), a plain reading of the statute does not allow for negative points for any scoring items other than State Representative letters.

Staff recommends no changes based on this comment.

24. §11.9(d)(7) – Selection Criteria – Concerted Revitalization Plan (3), (10), (21), (22), (26), (31), (32), (34), (35), (36), (45), (51), (89)

COMMENT SUMMARY: Commenter (3) expressed concern regarding the level of subjectivity relating to "sufficiently mitigated and addressed prior to the Development being placed in service" and further asserted that such language will only benefit neighborhoods that are at the end of their revitalization efforts. Commenter (3), (34) suggested the 2015 language with respect to this scoring item be reinstated. Similarly, commenter (10), (51) suggested that investment in affordable housing at the end of the revitalization process negates the positive impact such housing can have on an area that is on a positive revitalization trajectory and could make the purchase of the land impractical due to rising land costs in an area nearing the end of its redevelopment cycle. Commenter (10), (51) offered the following modification to this item:

"(IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be ~~will have been sufficiently~~ mitigated within a period of time commensurate with the plan's timeline ~~and addressed~~ prior to or after the Development ~~being~~has been placed into service."

Commenter (10) disagreed with the manner in which points will be awarded; specifically that a city our county can only indicate one development as most significantly contributing to revitalization efforts in the area. Commenter (10) asserted that this underestimates the revitalization needs of urban areas and further offered the following modification:

> "(ii) Points will be awarded based on:
>
> > (I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outline in the plan; and
> >
> > (II) An urban classified city or county may identify no more than three (3) Developments during each Application Round for the additional points under this subclause. ~~Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.~~"

Commenter (22), (32) expressed support for effectiveness at which the opening paragraph establishes the expectations of the characteristics of a revitalization area. Commenter (22) requested clarification with respect to the following sentence under subclause (III) relating to urban developments "In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to…" Specifically, whether this sentence means that the city or county has programs/activities in progress that can be documented by are not necessarily described in the plan document?

Commenter (26) expressed disagreement with the proposed changes to this scoring item, specifically, the delegation of such revitalization plans with the municipalities which is without standards for the conditions that must be addressed and without standards for the measurable improvements upon which the points are to be awarded. Commenter (26) suggested that the proposed language will allow for continued segregation in areas of slum and blight by making improvements that do not address significant elements thereof. By way of example, commenter (26) illustrated that a revitalization plan that calls for new sidewalks in an area of slum and blight could receive points even if there is partial completion of such sidewalk replacements. Commenter (26) asserted that there is no obligation to address other elements of slum and blight in order to achieve the points.

Commenter (32) asserted that the framework of the scoring item lacks objective benchmarks and will become just another "letter from a local official," promising that the area is already looking better and will be great by the time the development is placed in service. Considering the fact that

the local official can choose the measuring improvements to be used for documentation invites gaming of the process. To that end, commenter (32) recommended the Department look to three metrics over the past 3 years: census tract poverty, census tract income, and neighborhood land values relative to Place (Appraisal District) and that points under this scoring item should be awarded only if an application demonstrates a statistically significant improvement on two of these metrics over the 3 year timeframe since the date of the adoption of the revitalization plan. Commenter (32) acknowledged that this timeframe is longer than is currently proposed, it recognizes that true revitalization takes an extended commitment in local and private resources.

Commenter (31), (36) stated identified concerns regarding the subjectivity of this scoring item and recommended the modifications below to add specificity.

"(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an ~~distinct~~ area that ~~was once vital and has lapsed into a situation requiring~~has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan should~~that~~ meet~~s~~ the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been identified~~be identified~~ through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of ~~violent~~ crime~~, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances~~ or overt illegal activities; and/or

(-c-) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.

(III) Staff will review the ~~target area for presence of the problems identified in the~~ plan ~~and~~ for targeted efforts within the plan to address ~~those~~ the problems

identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;

(-b-) developing health care facilities;

(-c-) providing public transportation;

(-d-) developing significant recreational facilities; and/or

(-e-) improving under-performing schools.

However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have~~identify sufficient and~~,~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission.~~been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official ~~providing documentation of measurable improvements within the~~certifying the identified revitalization area, that the development is located within the revitalization area, and that ht eplan meets the requirements of subsections I, II and IV of this section~~based on the target efforts outlined in the plan~~; and

Commenter (31) indicated that in order to support the revitalization efforts in large cities, this scoring item should be modified to allow a city to designate more than one development as significantly contributing to revitalization, as reflected in the following:

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing ~~most~~ significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may ~~only~~ identify no more than three ~~one single~~ Developments during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same

Governing Body, ~~none~~then not more than three of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing ~~most~~ significantly to concerted revitalization efforts."

Commenter (45) suggested modifications as provided below that could address instances where cities may develop a revitalization plan in response to a natural disaster, which they believed would still align with the overall policy objective behind the scoring item.

"(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) ~~long-term disinvestment, such as significant presence of residential and/or~~ commercial blight, streets and/or sidewalks in significant disrepair;

(-b-) long-term disinvestment, such as the significant presence of residential and/or declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(-c-) destruction of property as a result of a natural disaster.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. While it will generally be expected that ~~This~~this funding ~~must~~would have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service, plans that are more recently adopted due to events that created cause for such a plan may be considered if sufficient evidence is provided to indicate that it is reasonable to expect that the goals of the plan will be able to be met."

Commenter (32) expressed the opinion that developing health care facilities under (A)(i)(III)(-b-) of this scoring item does not augment a desirable neighborhood and further stated that there is a long tradition of relegating clinics and public hospitals to areas with low land values and few residential amenities. As a result, commenter (32) recommended this option be deleted from this scoring item.

Commenter (21) indicated that while they are in agreement that concerted revitalization in a rural area is separate and distinct from an urban area, they expressed an objection to the disparity in points and recommended the scoring be adjusted, without increasing the requirements, so that revitalization in both areas would yield the same point value.

Commenter (35) asserted that the proposed changes to this scoring item are too restrictive and further suggested that HUD's Site and Neighborhood standards guidance would be helpful in drafting this scoring item that is consistent with HUD's interpretation of the Fair Housing Act. Commenter (35) further added that HUD has always carved out an exception for revitalizing areas in the Site and Neighborhood Standards and that examples of such areas can be found in 24 CFR 983.57(e)(3)(vi). These "revitalizing areas" as defined by HUD would capture those gentrifying areas

where there is revitalization and significant private investment; therefore, commenter (35) urged the Department to adopt HUD's definition of a revitalizing area as qualifying for full points under this scoring item.

Commenter (89) expressed concern over the possibility for applicant's to orchestrate the development of a revitalization plan to receive points, despite the proposed changes. In an effort to prevent this, commenter (89) suggested this scoring item be modified such that only revitalization plans that show true community input should be eligible for the points; simply showing evidence that notice has been given to the public does not constitute public input. Further, if no one in the community is interested in providing comments, it is unlikely that the plan represents a legitimate need or effort to revitalize the area. Moreover, commenter (89) suggested that plans less than 6 months old should not be accepted, but that the plans must have started at least 6 months prior to the application deadline; and lastly, there should be no involvement on the part of any member of the Development Team in the formulation of such plan; it must be developed at the direction of the local government and without involvement of the applicant.

STAFF RESPONSE: Staff agrees with the additional clarification regarding infrastructure neglect as recommended by commenter (31), (36) and has made the change accordingly.

In response to commenter (10) and (31), staff believes that identifying only one development as most significantly contributing to the concerted revitalization efforts of the city or county where the area being revitalized continues to be appropriate. Allowing for the scoring boost for multiple revitalization-based developments represents a potential impetus for rapid concentration and a disproportionate utilization of limited resources. Furthermore, staff is concerned that the failure to achieve an award for all of the developments identified as most significantly contributing could undermine the ability to sufficiently mitigate issues identified in the plan prior to the subject development being placed into service.

In response to commenter (26), staff agrees that the example provided of sidewalk replacement could be considered part of a revitalization plan for some fund sources and programs, but believes that this is not the case for this scoring item. The described revitalization plan would not meet the requirements of this section.

In response to commenter (32), staff believes that the suggested measures would not provide a reliable measurement of the impact of all concerted revitalization plans. The measurements could be used to support the application for this scoring item.

In response to commenters (31), (36), staff believes that the section as drafted provides sufficient description of the requirements for an acceptable revitalization plan without removing necessary flexibility.

In response to commenter (45), developments in counties that have been proclaimed disaster areas within the preceding three years already have a scoring incentive. Further, staff believes that disaster recovery is not a revitalization effort.

In response to commenter (32), no evidence was provided to support the comment that health care facilities do not augment a desirable neighborhood, and in fact, proximity to medical care is a community asset in other scoring items. Staff believes that the example is appropriate.

In response to commenter (21), the concerted revitalization plan described for urban areas supports local efforts to remove longstanding blighting influences in specific areas, while the measures for rural communities address efforts to create continued economic growth. Because these are 2 distinct requirements, staff believes the scoring is appropriate.

In response to commenter (35), while HUD's Site and Neighborhood standards guidance, generally, may contain useful measures and definitions, staff believes that the proposed rule more appropriately addresses this issue. Further, the depth of analysis required to determine if a wholesale adoption of federal guidance in this area is appropriate in all cases, and achieves the purposes of the rule, exceeds the time constraints of this rule-making proposal. Finally, the extent of the changes to the scope of the proposed rule as suggested by the Commenter, and incorporation of the HUD Site and Neighborhood Standards and/or the HUD definition of "a revitalizing area," would require renewing the rule-making process and re-publication prior to adoption.

In response to commenter (89), staff believes that imposing requirements on units of local government that impact the way they conduct business would be overreaching and inappropriate.

25. §11.9(e)(2) – Selection Criteria – Cost of Development per Square Foot (1), (3), (21), (23), (25), (27), (31), (35), (36), (48), (49)

COMMENT SUMMARY: Commenter (1), (23) expressed support for the inclusion of 50 square feet of common area space into the net rentable area calculation. However, commenter (1) indicated that this scoring item, in all of the categories, failed to reflect changes due to increases in construction costs and further indicated that such costs differ between four-story, elevator-served general population developments and that of single room occupancy supportive housing and the categories should therefore be distinct. According to commenter (1), supportive housing developments have less of the cheaper square footage to build, but more cost per square foot of the more expensive square footage (plumbing, electrical, HVAC). Commenter (1), (23) suggested the following modifications to this scoring item:

> "(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:
>
> > (i) The Building Cost per square foot is less than $90~~70~~ per square foot;
> >
> > (ii) The Building Cost per square foot is less than $95~~75~~ per square foot, and the Development meets the definition of a high cost development;
> >
> > (iii) The Building Cost per square foot is less than $125 per square foot, and the Development meets the definition of both a high cost development and a single room occupancy Supportive Housing development;
> >
> > (iv~~ii~~) The Hard Cost per square foot is less than $110~~90~~ per square foot;~~ or~~
> >
> > (~~i~~v) The Hard Cost per square foot is less than $120~~100~~ per square foot, and the Development meets the definition of high cost development; or~~.~~

(vi) The Hard Cost per square foot is less than $150 per square foot, and the Development meets the definition of both a high cost development and a single room occupancy Supportive Housing development."

Commenter (3), (31), (36), (48) recommended the calculations in this scoring item be increased by $10 per square foot, at a minimum, further stating that the current language does not account for recent construction cost increases which, according to these commenters have been 8-12% per annum over the last three years. Commenter (49) recommended an increase of cost per square foot limitations by 15% to account for actual hard cost increases and inflation since 2013. Commenter (21) recommended an increase of $10, but preferably by $12 per square foot and further requested that subparagraphs (A)(iv) and (E)(ii) of this item be updated to correspond with the proposed scoring point changes relating to the Opportunity Index. Along these lines, commenter (3), (49) suggested the following revision within this item:

"(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the Development is considered a high cost development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or.."

Commenter (25) stated the cost per square foot threshold for adaptive reuse or acquisition/rehabilitation was low for scoring purposes and further suggested that for those that include 100% historic development, the costs should exceed 20% of the allowable threshold.

Commenter (27) indicated that this scoring items needs to be modified to account for the considerations made under the historic preservation scoring item, specifically, to make them competitive. When dealing with historic structures, according to commenter (27), the current $130/SF limitation is unachievable and recommends the following modification:

"(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; ~~or~~

(iii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $175 per square foot, that qualify for points under subsection (e)(6) of this section, related to Historic Preservation; or

> (iv~~ii~~) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, or $200 per square foot for Applications that qualify for points under subsection (e)(6) of this section, related to Historic Preservation."

Commenter (35) asserted that a more constructive approach to this scoring item would be to cap the amount of tax credits generated by their hard costs in order to qualify for points. In doing so, according to commenter (35) it would involve a policy choice with the same logic as in the 2015 QAP of disregarding certain costs and space; however, it would encourage more due diligence and full disclosure at application. To achieve this, commenter (35) requested the following sentence be added to the end of this scoring item:

> "This calculation does not include Hard Costs voluntarily excluded from eligible basis."

STAFF RESPONSE: In response to the commenters, the providing of scoring incentives for cost per square foot should not be conflated with the operation of other rules, chiefly underwriting rules, to allow for increased costs.

Staff recommends no changes based on these comments.

26. §11.9(e)(4) – Selection Criteria – Leveraging of Private, State and Federal Resources (1)

COMMENT SUMMARY: Commenter (1) suggested staff allow supportive housing developments that do not have third party hard debt be allowed the tolerance under clause (i) of this scoring item to increase to the 9% leveraging rate. It is the assertion of commenter (1) that a supportive housing application will always reflect the maximum amount of credits in order to help bridge the gap that can't be supported with debt and further stated that such structure ensures that these developments will almost always have a larger percentage of tax credits to total development costs. Commenter (1) further indicated that the types of funding sources currently allowed under clause (i) are eligible for hard debt and therefore this scoring item is not equitable with that of supportive housing which are fundamentally different in this regard. Commenter (1) recommended the leveraging percentages in this scoring item be increased 1% for supportive housing developments with no permanent debt as reflected in the following:

> "(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding or the Development is Supportive Housing and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or"

STAFF RESPONSE: This item provides points for leveraging of several fund sources, rather than types of developments. Supportive Housing developments that use any of these fund sources in their financing structure are able to gain these points if Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost.

Staff recommends no change based on this comment.

27. §11.9(e)(6) – Selection Criteria – Historic Preservation (4), (21), (27), (32), (45), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88)

COMMENT SUMMARY: Commenter (27) expressed support for the changes to this scoring item but believes further changes are necessary relating to the percentage of units required to be maintained within the historic structure. The current language that requires 75% of the units be maintained is excessive and does not account for historic structures that are small and cannot accommodate enough units to make redevelopment financially feasible unless new units are added to the site. Commenter (27) recommended a decrease in the percentage to 40%.

Commenter (4) asserted that with the proposed changes to the point value associated with this item, it is possible to have a historic preservation application with a revitalization plan outscore a 7-point high opportunity application with top schools which, according to commenter (4), should not be encouraged over high opportunity areas that are inherently in high income, low poverty, and high performing areas, characteristics which differ from the locations in which historic developments are found. Commenter (4), (45) recommended the point value be reduced from 5 points to 2 points and further maintained that based on where historic preservation was inserted into the legislation the point value is too high and should be consistent with neighboring point items. Commenter (4) further asserted that in a practical sense, this is a location specific criteria, and therefore could undermine the objectives of the Remedial Plan and specifically the Opportunity Index if given too much weight. Commenter (45) recommended the following modification:

> "(6) Historic Preservation. (§2306.6725(a)(5)) An Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive <u>up to two (2)</u>~~five (5)~~ points. At least <u>one existing building that will be part of the Development</u>~~seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development~~ must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status."

Commenter (32) opposed the proposed changes to this scoring item which they believed increase the emphasis on historic structures relative to other factors far beyond what is necessary to comply with SB 1316. Commenter (32) maintained that the 2015 point value suitably prioritize historic buildings over new construction when they are in areas with opportunity for the families within them, or when they are in areas that have undergone the comprehensive revitalization necessary to provide opportunity to the families.

Commenter (21), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88) expressed support for the proposed changes to this scoring item which would allow for these existing historic structures within a city to be restored as a vibrant asset to the community.

STAFF RESPONSE: In response to commenter (27), staff believes that the Historic Preservation points are to encourage the re-development of affordable units within a historic property, and as

such believes that a significant majority of the units should be contained within the historic structure.

In response to commenters (4), (45), staff agrees in part with the potential for a Historic Preservation Development in a Concerted Revitalization Area outscoring a Development in a High Opportunity Area with maximum Educational Excellence points. To address this possibility, staff recommends a reduction in points for Historic Preservation of two (2) points when the Development also qualifies for one (1) or three (3) points under Educational Excellence. Staff recommends the following change:

> "(6) Historic Preservation. (§2306.6725(a)(5)) Except for Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5), a~~A~~n Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive five (5) points. Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5) that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive three (3) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status."

28. §11.9(f) – Point Adjustments (22)

COMMENT SUMMARY: Commenter (22) suggested that while paragraph (2) under this item identifies violations that should be considered, the opening sentence of the item does not specifically allow a point deduction for such violations and therefore requested clarification.

` **STAFF RESPONSE:** In response to commenter (22), staff believes that the item provides sufficient authority for adjustment of points in response to violations.

Staff recommends no changes based on this comment.

29. §11.9(f) – Third Party Request for Administrative Deficiency (21), (34)

COMMENT SUMMARY: Commenter (21) expressed support for the proposed changes to this section and requested the Department post the application deficiencies and applicant responses to the website throughout the review period. In doing so, commenter (21) believed it would alleviate the administrative burden of the Department as well as increase the transparency of the review process.

Commenter (34) recommended such third party requests be limited to one submission per application by any single third party requestor and further maintained that even with such limitation the Department will receive multiple requests from related persons, each of who would qualify as a

"third party." Commenter (34) indicated that this potential may hinder the evaluation process if the June 1 deadline is used and as a result suggested an earlier deadline be implemented.

STAFF RESPONSE: In response to commenter (21) staff intends to update the applications that are posted on the website as reviews are done. As applications are reviewed and deficiencies are resolved, the application posted to the web will be updated nightly with the most current information received in response to staff's review. In this respect, the public will have access to the same information staff has and they can use that information to determine whether to proceed with a third party request for administrative deficiency.

In response to commenter (34), the number of third party requests will not be limited, as new information may trigger the need for a new submission. If staff identifies multiple requests from related persons, staff will endeavor to evaluate them as a single request but may, as dictated by resource constraints or deemed appropriate, take them up separately.

Staff recommends no changes based on this comment.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

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(3) Texas Affiliation of Affordable Housing Providers
(4) Alyssa Carpenter
(5) Palladium USA
(6) Chris Boone, City of Beaumont
(7) Rural Rental Housing Association of Texas
(8) Fountainhead Management, Inc.
(9) Dennis Hoover
(10) Houston LISC
(11) Alan Warrick, San Antonio City Councilman
(12) Ivy Taylor, Mayor of San Antonio
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(16) VIA Metropolitan Transit San Antonio
(17) San Antonio Housing Authority
(18) Tommy Calvert, Bexar County Commissioner
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(34) Barry Palmer, Coats Rose
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Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 11, §§11.1 – 11.10, concerning the 2015 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6466) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2016 application cycle.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 12, 2015.

STATUTORY AUTHORITY. The repealed sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repealed sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§11.1 General
§11.2 Program Calendar for Competitive Housing Tax Credits
§11.3 Housing De-Concentration Factors
§11.4 Tax Credit Request and Award Limits
§11.5 Competitive HTC Set-Asides
§11.6 Competitive HTC Allocation Process
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Housing Tax Credit Program Qualified Allocation Plan

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2015, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation.

§11.2.Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Executive Director that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
01/04/2016	Application Acceptance Period Begins.
01/08/2016	Pre-Application Final Delivery Date (including waiver requests).
03/01/2016	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).

Deadline	Documentation Required
04/01/2016	Market Analysis Delivery Date pursuant to §10.205 of this title.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2016	Carryover Documentation Delivery Date.
~~07~~06/~~03~~30/2017	10 Percent Test Documentation Delivery Date.
12/31/2018	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3.Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or

county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may

be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey and the Development is in a Place that has a population greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4.Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;
(2) provides "qualified commercial financing;"
(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. ~~The~~For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;
(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;
(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);
(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter; or
(E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter.

§11.5.Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation).

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be

attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region unless the Application is receiving USDA Section 514 funding. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Commitment deadline;
(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and
(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the

proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6.Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program

review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. ~~This includes any Applications awarded under subparagraph (B) of this paragraph.~~ The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website. ~~These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)).~~

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award

the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion~~. This includes any Applications awarded under subparagraph (B) of this paragraph.~~ The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website. ~~These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)).~~This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that

received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(3) ~~For competing Applications for Developments that will serve the general population, t~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials; and

(H) Proposed name of ownership entity.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve exclusively a Target Population unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission 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 Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may be subject to change, including, but not limited to, changes in the amenities ultimately selected and provided.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;
(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive one (1) point if ~~up to two (2) points under subparagraphs (A) and (B) of this paragraph.~~

~~(A) T~~the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant,

cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (1 point)

~~(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)~~

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit or for Developments participating in the City of Houston's Permanent Supportive Housing ("HPSH") program. A Development participating in the HPSH program and electing points under this subparagraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for five (5) or seven (7)

points under paragraph (4) of this subsection (relating to the Opportunity Index), and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection (relating to Tenant Populations with Special Housing Needs) (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit or Developments participating in the HPSH program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. A Development participating in the HPSH program and electing eleven (11) points under this paragraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) - (v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement; or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating,

has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iv) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(v) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) ~~Except for an Elderly Limitation Development, t~~The Development Site is located within the attendance zone ~~(or in the case of a choice district the closest)~~ of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);

(ii) The Development Site is within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

(iii) The Development Site is located within 1.5 linear miles of a full service grocery store (2 points);

(iv) The Development Site is located within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);

(v) The Development Site is located within 1.5 linear miles of a senior center (2 points); and/or

(vi) The Development Site is located within 1.5 linear miles of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the rating of the closest elementary schools that may possibly be attended by the tenants. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. Except for Supportive Housing Developments, a~~A~~n Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) -~~and~~ (C~~B~~) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined by the Texas Education Agency. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the rating of the closest elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points, or 2 points for a Supportive Housing Development); ~~or~~

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points; (3 points, or 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points. (1 point)

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points if the Development Site is located in one of the areas described in subparagraphs (A) - (G) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);
(B) An Economically Distressed Area (1 point);
(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation serving the same Target Population whichfor a Development that remains an active tax credit development (2 points);
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);
(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point);
(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or
(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to three (3) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph.

(A) Applications may qualify for ~~three~~two (2~~3~~) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing ~~Development's~~ Development in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

(B) Applications meeting all of the requirements in clauses (i) – (v) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and requirements limits the proposed Development to fewer than 10 Units. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph.

(i) The Development must not be an Elderly Limitation Development or Supportive Housing;

(ii) The Development must not be originally constructed before 1978;

(iii) The Development has units available to be committed to the Section 811 PRA Program in the Development, meaning that those units do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; Corpus Christi MSA; or San Antonio-New Braunfels MSA; and

(v) The Development Site must not be located in the mapped 500-year floodplain or in the 100-year floodplain.

(C) Applications proposing Developments that do not meet all of the requirements of clauses (i) – (v) of subparagraph (B) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence,

sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development may qualify to receive up to ~~three~~five (~~3~~5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). An Application for a Supportive Housing Development may qualify to receive up to two (2) points under subparagraph (A) only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) ~~All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points).~~In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):

(i) Walk-in (also known as roll-in) showers of at least 30" x 60" in at least one bathroom in each unit;

(ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;

(iii) Chair or seat height (17-19") toilets in all bathrooms; and

(iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length.

(B) The Property will employ a dedicated ~~full-time~~ resident services coordinator on site for the duration of the ~~Compliance Period and Extended Use Period~~Affordability Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, ~~full-time~~dedicated is defined as an employee that is reasonably available exclusively for service coordination to work with residents during normal business hours at posted times~~follows~~ (~~1~~2 points):

~~(i) a minimum of 16 hours per week for Developments of 79 Units or less; and~~
~~(ii) a minimum of 32 hours for Developments of 80 Units or more.~~

(9) Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius (three~~two~~- (3)mile radius for Developments in a Rural Area) of the services listed below. These do not need to be in separate facilities to qualify for the points. A map must be included identifying the Development Site and the location of each of the services.

(A) Full Service Grocery Store (1 point);
(B) Pharmacy (1 point).

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J~~I~~); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state ~~(includes the Department)~~ or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) not later than 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood

Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2016. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. (§2306.6725(a)(2))Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Once a

letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring

concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;

(-b-) developing health care facilities;

(-c-) providing public transportation;

(-d-) developing significant recreational facilities; and/or

(-e-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined~~outline~~ in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in a Rural Area.

(i) The requirements for concerted revitalization in a Rural Area are distinct and separate from the requirements related to concerted revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) - (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) - (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) To qualify under clause (i) of this subparagraph, the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $70 per square foot;

(ii) The Building Cost per square foot is less than $75 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $90 per square foot; or

(iv) The Hard Cost per square foot is less than $100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $75 per square foot;

(ii) The Building Cost per square foot is less than $80 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $95 per square foot; or

(iv) The Hard Cost per square foot is less than $105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost is less than $90 per square foot; or

(ii) The Hard Cost is less than $110 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) Except for Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5), aAn Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive five (5) points. Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5) that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive three (3) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status.

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or

set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. As a practical consideration, the Department expects that such requests be received by June 1. Requests made after this date may not be reviewed by staff. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

Public Comment

(1) Foundation Communities

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follow us on twitter

October 13, 2015

Marni Holloway
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Marni:

Thank you for the opportunity to comment on the DRAFT 2016 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We very much appreciate the TDHCA staff for their careful thought and collaboration regarding potential changes to the QAP and rules. We would also like to commend the TDHCA staff for the creative expansion of programs and systems that promote Supportive Housing, green building, targeting of lower incomes, and developments located in urban areas.

Qualified Allocation Plan:

11.6(5) Credit Returns Resulting from Force Majeure Events. The greatest impact on the timing of a development's completion are a series of compounding events. For example, a rainy month plus labor shortage plus a City's change in interpretation of specific development requirements can situate a project very close to their PIS deadline. We ask that TDHCA consider "event chains" where the presence of three or more of the combined factors has caused a project to push past their PIS deadline. We feel comfortable making this suggestion because we know that TDHCA will rely on the burden of proof in evaluating such a request.

11.7 Tiebreaker Factors: We support the additions TDHCA made in the 2016 Draft QAP for tiebreaker factors; however, we encourage TDHCA to please consider adding proximity to public transportation. If you have the choice of two really high opportunity areas in urban areas, the property that is most accessible to public transportation is the project that will align with responsible development and broader appeal to the State's affordable housing residents living in urban areas.

11.9(b)(2) Sponsor Characteristics: While Foundation Communities is ranked as a category 1 portfolio; we do not feel adding in a point for compliance history is good policy. There are numerous examples of times where the ability to "correct" a situation is completely out of an owner's control (for example, the resident who needs to sign the non-compliant form has since died.) This inability to correct a situation has no bearing on the quality of an owner's community or the compliance ability. We are particularly nervous implementing a scoring

a Partner Agency of

factor centered on compliance given the new federal laws in place that TDHCA is still proposing compliance criteria to support. We see this as a problematic scoring criteria and gives certain owners an advantage over other owner's that are just as responsible and compliant, but just had an unfortunate circumstance that they were not able to correct. Please consider striking this section and returning to 2 points for HUB or Nonprofit participation.

11.9(d)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Supportive Housing without any third party hard debt should be given the tolerance allowed under section (i) to go up to a 9% leveraging rate. With no debt, a Supportive Housing project must raise the gap between the tax credits awarded and the total development cost. Sources include local, state and federal soft loans/grants, as well as private foundation grants and owner contributions. A Supportive Housing applicant is always going to apply for the maximum amount of credits in order to help bridge the gap that can't be supported with debt. This structure ensures that Supportive Housing will almost always have a larger percentage of tax credits to total development costs.

In the 2016 QAP, CDBG, HOPE VI, RAD or Choice Neighborhood funding is excepted and allowed to go up to a 9% leverage rate. These projects are eligible for hard debt. It does not seem equitable that these projects are allowed this exception when Supportive Housing is not. Supportive Housing projects must raise their entire gap from sources that often include federal pass-through dollars from the City or State.

We would recommend raising the leveraging percentages by 1 percent for Supportive Housing deals with no permanent debt.

Please change Section 11.9(d)(4) to read as follows:

(A)(i) the Development leverages CDBG Disaster Recovery, Hope VI, RAD or Choice Neighborhoods funding OR the Development is Supportive Housing and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points).

11.9(c)(8) Aging in Place: Please provide an alternative for Supportive Housing, in line with the alternative the draft reflects for "Aging in Place." Like Aging in Place developments, the excellence of nearby schools has no bearing on the suitability of a site for Single Room Occupancy Supportive Housing where no children live at the property. Finding sites to develop Supportive Housing is already a challenge because you need to be connected to public transportation, located close to amenities and accessible to services. Requiring high performing schools is an unnecessary hurdle since individuals living in Single Room Occupancy Supportive Housing Developments will not have any school aged children living at the proper. We recommend simply adding the following language:

> *"An application for an Elderly Development or a Supportive Housing Single Room Occupancy Development may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)."*

11.9(e)(2)(B) Cost of Development per Square Foot: We thank TDHCA for adding back in to the QAP the ability for Supportive Housing developments to factor in 50 square feet of common area space into the Net Rentable Area. This is hugely important for Supportive Housing where common area square footage made up of multiple supportive service offices, tv lounges, meeting rooms and community kitchens are double or triple the amount contained in family properties.

A further comment to this section is due to the construction costs in Austin that have continued to skyrocket (we imagine the same is true in urban areas throughout the state). Projects have particularly been cost burdened due to labor shortages from all the construction projects underway. Due to this fact, we believe the construction costs should be increased throughout this category. Second, due to the vast difference in construction cost between a four-story, elevator-served family project and a Single Room Occupancy Supportive Housing community, we ask that TDHCA make the two categories distinct. SRO Supportive Housing has less of the cheaper square footage to build, but more cost per square foot of the more expensive square footage (plumbing, electrical, HVAC.)

> *(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:*
>
> *(i) The Building Cost per square foot is less than $90 per square foot;*
>
> *(ii) The Building Cost per square foot is less than $95 per square foot, and the Development meets the definition of a high cost development;*
>
> *(iii)The Building Cost per square foot is less than $125 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development;*
>
> *(iv) The Hard Cost per square foot is less than $110 per square foot; or*
>
> *(v) The Hard Cost per square foot is less than $120 per square foot, and the Development meets the definition of high cost development;*
>
> *(vi) The Hard Cost per square foot is less than $150 per square foot, and the Development meets the definition of both a high cost development* AND a single room occupancy Supportive Housing development.

Multi-Family Rules:

10.101(a)(4)(B) Use of Neighborhoodscout.com: Foundation Communities supports TACDC's comments regarding utilizing neighborhoodscout.com. As proprietary software, we are unsure how the website owners collect, analyze, and report data across a city. We are concerned that the data is not accurate and should not be utilized to base policy decisions. We echo TACDC's comments that TDHCA not rely on this website for purposes of TDHCA's multifamily programs.

10.101 (b)(7) Tenant Supportive Services: Foundation Communities is not supportive as utilizing section (Z) below for points in the Tenant Supportive Services section. A development might happen to be located within one mile of one of these facilities, but they do not engage nor refer their residents to their use. This turns out to be a free point for deals when they could be forced to choose from the menu of services that actually require participation to get the point. We feel this is a loop hole. This section was originally included

specific to Supportive Housing. Section (Z) should be called out for Supportive Housing exclusively.

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point:
(i) Facility for treatment of alcohol and/or drug dependency;
(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;
(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or
(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of
limited financial means.

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact our team with any questions.

Sincerely,

Jennifer Hicks
Director of Housing Finance

(2) Don Zimmerman,
Austin City Councilman

City of Austin

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October 7, 2015

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

RE: PUBLIC COMMENT FOR PROPOSED TDHCA RULES FOR 9% COMPETETIVE 2016 QUALIFIED ALLOCATION PLAN AWARDING FEDERAL TAX CREDITS FOR LOW-INCOME HOUSING

Dear Ms. Morales:

Please accept this letter, and its attachment, as my public comment relative to the Texas Department of Housing and Community Affairs' 9% competitive 2016 Qualified Allocation Plan (QAP) for the awarding of Federal tax credits for the construction of low-income housing.

Having delved into this issue, I have come to the conclusion that there is a systemic bias that heavily favors the awarding of these Federal tax credits for the construction of low-income housing in local communities which oppose such developments. My recommended reforms would help to "level the playing field".

The attached document takes its text directly from the TDHCA's proposed 2016 Draft QAP to be found on the agency's website at: *http://www.tdhca.state.tx.us/public-comment.htm*

The attached document recommends various changes to the 2016 Draft QAP with suggested new wording appearing in red font with underline and with suggested deletions of existing wording appearing in blue font between brackets and with strike-through.

I thank the TDHCA for its thoughtful consideration of these recommended changes to its 2016 Draft QAP.

Sincerely,

Don Zimmerman
City Councilman
District 6

Attachment

DZ:gdw

*The City of Austin is committed to compliance with the Americans with Disabilities Act.
Reasonable modifications and equal access to communications will be provided upon request.*

Input from Austin City Councilman Don Zimmerman relative to the scoring process used by the Texas Department of Housing and Community Affairs (TDHCA) in evaluating whether to award federal tax credits for the construction of low-income housing for the agency's Housing Tax Credit (HTC) 9% competitive 2016 Qualified Allocation Plan (QAP).

The following are taken directly from TDHCA's proposed draft 2016 Housing Tax Credit Qualified Allocation Plan, to be found in §11.9 (d) thereof:

• For a Proposed Application or Development within a Municipality (p. 23)—

"(A) Within a municipality, the Application will receive or sustain:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; [~~or~~]

(ii) a deduction of seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development[~~; or~~

~~fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development~~];

(iii) if the Governing Body of that municipality elects its members from single-member districts, an addition of ten (10) points for a letter of support from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development; or

(iv) if the Governing Body of that municipality elects its members from single-member districts, a deduction of ten (10) points for a letter of opposition from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development."

• For a Proposed Application or Development within the Extraterritorial Jurisdiction of a Municipality (p. 23-24)—

"(B) Within the extraterritorial jurisdiction of a municipality, the Application shall [~~may~~] receive or lose points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph as indicated:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) a deducation of eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; or

[seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and]

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) a deducation of eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development

[seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development]."

• **For a Proposed Application or Development within a County but not within a City or within a City's Extraterritorial Jurisdiction (p. 24)—**

"(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, an Application or Development shall receive or sustain:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) a deduction of (17) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development

[fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development]."

• **For Point Values for "Quantifiable Community Participation" (Neighborhood Organizations and Home Owner Associations) (p. 24-26)—**

"(4) Quantifiable Community Participation (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application shall [may] qualify to receive, or have deducted, as appropriate, eight (8) [for up to nine (9)] points for written statements from a Neighborhood Organization or a Home Owner Association (as established by Texas Property Code, Title 11, Chapter 209, known as the 'Texas Residential Property Owners Act'. In order for the statement to qualify for review, the Neighborhood Organization or Home Owner Association must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site or be within one linear mile from an edge of the Development's boundary to an edge of a Neighborhood Organization's—or Home Owner Association's—boundary. In addition, the Neighborhood Organization or Home Owner Association must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round [with the Department] by submitting documentation (such as evidence of board meetings, bylaws,

etc.) not later than 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's—or Home Owner Association's—name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization or association;

(ii) certification that the boundaries of the Neighborhood Organization, or Home Owner Association, contain the Development Site—or be within one linear mile from an edge of the Development Site's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary—and that the Neighborhood Organization or Home Owner Association meets the definition pursuant to Texas Government Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code, §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, or Home Owner Association, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization, or Home Owner Association, consists of persons residing or owning real property within the boundaries of the Neighborhood Organization or Home Owner Association; and

(v) an explicit expression of support or [,] opposition[, or neutrality].

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the usage of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the Quantifiable Community Participation (QCP) Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive or lose points based on the values in clauses (i) – (vi) of this subparagraph. Points will

not be cumulative. Where more than one written statement is received for or against an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) [~~nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;~~

~~(ii)~~] eight (8) points for explicitly stated support from a Neighborhood Organization or Home Owner Association; or

(ii) a deduction of eight (8) points for explicitly stated opposition from a Neighborhood Organization or Home Owner Association

[~~(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.~~

~~(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;~~

~~(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or~~

~~(vi) zero (0) points for statements of opposition meeting the requirements of this subsection~~]."

- **For Point Values for Support or Opposition from a State Representative (p. 26-27)—**

"(5) Community Support from State Representative. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) Applications shall [~~may~~] receive [~~up to~~] eight (8) points or have deducted [~~up to~~] eight (8) points for this scoring item. To qualify under this paragraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly express [~~state~~] support for, or opposition to, the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters, or letters that do not specifically refer to the Development, or which fail to

specifically express support or opposition, will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.*, 'the local jurisdiction supports the Development and I support the local jurisdiction') will be treated as a neutral letter."

• **For Point Values for "Input from Civic and Community Organizations" (p. 27)—**

"(6) Input from Civic and Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or Home Owner Association—or be within one linear mile from an edge of the Development's boundary to an edge of a qualifying Neighborhood Organization or Home Owner Assocation—[~~,~~]then, in order to ascertain if there is community support or opposition, an Application shall [~~may~~] receive [~~up to~~] four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. Four [~~No more than four~~] (4) points will be awarded for letters in support, or deducted for letters in opposition, as applicable, under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. [~~Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.~~]

(A) An Application shall [~~may~~] receive two (2) points for each letter of support, and shall have deducted two (2) points for each letter of opposition, submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support or opposition must identify the specific Development and must express [~~state~~] support of, or opposition to, the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support or opposition from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points or have points deducted, as the case might be. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application shall [~~may~~] receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application shall [~~may~~] receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site."

(3) Texas Affiliation of Affordable Housing Providers

Proposed Section 811 Alternative Incentive for TAAHP consideration

TAAHP presents this alternative incentive for consideration of membership and possible presentation to TDHCA. It is a blend of the 2015 scoring incentive and other incentives.

- Prong 1: Revert to 2015 QAP language for 9% HTC **AND** include 4% HTC development participation in Section 811 Program - This way both programs are participating in furthering 811 Program

For the 4% HTC developments - include a threshold item that requires commitment of Section 811 PRAC units in the proposed development, or existing 4% HTC developments, utilizing a tiered approach as follows: Developments with 100 units or less, applicant must commit 10 units to the Section 811 PRAC program; Developments with 101-200 units, applicant must commit at least 20 units to the Section 811 PRAC program; Developments with 201 units or more, applicant must commit 30 units to the Section 811 Program. Applicants may commit less units, if the Integrated Housing Rule (10 TAC Section 1.15) or Section 811 PRAC Program guidelines and requirements limits the Development to fewer than the required number of units.

The Development must not be an Elderly Limitation Development or Supportive Housing;

The Development has units available to be committed to the Section 811 PRAC Program, meaning those units do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving Section 811 assistance and cannot have an existing restriction for persons with disabilities;

The Developments must be located in the Urban areas of one of the following: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Ft. Worth-Arlington MSA, El Paso MSA, Houston-The Woodlands-Sugar Land MSA, McAllen-Edinburg-Mission MSA or San Antonio-New Braunfels MSA;

The Development Site must not be located in the mapped 500-year floodplain or in the 100-year floodplain.

- Prong 2: Incentives for Committing Section 811 Units in Existing Developments - Outside of Scoring Criteria

Applicants may receive one of the following incentives for placing at least 10 Section 811 PRAC units in their existing developments:

1. Increased Developer Fee. Applicants may receive up to an additional 5% in Developer Fee to what is prescribed in 10.302(d)(7)
2. Decrease Extended Use Period. Applicants may reduce their Extended Use Period by up to five (5) years. Extended Use Periods cannot be less than the federally mandated 30 years.

We may also want to consider language in the stand alone Section 811 NOFA, rather than include this in a rule. Perhaps this will help with the "logical outgrowth" rule theory. The idea here is to utilize the incentives to work for a specific existing development, of Applicant's

choosing, that can benefit from one of these incentives. Language included for NOFA could be as follows:

NOFA - Should an applicant receive a Housing Tax Credit award, there will be favorable considerations made by staff recommending LURA amendments in existing Developments chosen by the Applicant. LURA amendments incentives are as follows:

1. Decrease Extended Use Period by up to five (5) years;
2. Reduction in restricted units, during Extended Use Period - work outs to reduce compliance issues.

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October 13, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2016 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP), the Underwriting and Loan Policy, and the Post Award and Asset Management Requirements that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 1, 2015 in response to the rules approved for public comment by the TDHCA Governing Board on September 11, 2015.

Please note that while the following recommendations are numerous due to the large and diverse membership, there are several issues that generated significant amount of discussion among the TAAHP membership. I highlight those three issues here, in an effort to emphasize their importance to our membership and encourage TDHCA staff to give them serious consideration.

1. Reducing concentration. Under the current rules, applicants are often competing for sites within the same census tracts, which often results in developers paying a premium for land that is not necessarily the best real estate in terms of connectivity to amenities and services. Adding concepts like "same type development" to the tie breaker and to the underserved point category and adding more tiering in terms of educational excellence are efforts to open up new census tracts to the competition.
2. Clarifying the competitive process. There are several new concepts in the QAP that are very vague in terms of how they will be applied. One example is the new category in the underserved point category for job growth. Another example is the new point category for applicants depending on whether the portfolios are characterized as either Category 1, 2, 3 or 4. There is a great deal of confusion as to which categories apply and the TAAHP membership requests clear guidance in order to make informed decisions in terms of the competition.
3. The Section 811 Program. TAAHP is opposed to the new one point advantage for placing Section 811 voucher holders in existing properties. We understand that TDHCA wants to house 811 voucher holders as soon as possible, but this provision reduces program participants' flexibility in doing so and, as drafted, only benefit a handful of program participants. As an example, one TAAHP member

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NuRock Development Group

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Itex Property Management, LLC

TOM DIXON
Boston Capital

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Apartment Market Data, LLC

DAN KIERCE
RBC Capital Markets- Tax Credit Equity Group

DAVID MARK KOOGLER
Mark-Dana Corporation

MARK MAYFIELD
Texas Housing Foundation

JANINE SISAK
JSA Development Company, LLC

CHRIS THOMAS
CohnReznick LLP

RON WILLIAMS
Southeast Texas Housing Finance Corporation

Executive Director
FRANK JACKSON

with more than 25 properties with approximately 2,000 units has only one existing property that would qualify. Under this new rule, this applicant is now forced for point reasons to reserve this property for the 2016 round instead of using it to house the 811 voucher holders as committed under the 2015 rules. This result is the exact opposite of what TDHCA is trying to achieve. Please note that TAAHP has formed a sub-committee that has come up with alternative incentives for TDHCA staff to consider. We will be submitting those recommendations under separate cover.

With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter A – Definitions

Section 10.3(47) Elderly Development

TAAHP requests further clarification on why these new definitions are necessary.

Justification: There is general concern amongst the membership about the new Elderly Development Definition because most cities and other government funders are very sensitive to these definitions. An effort to further define these terms might lead to greater conflicts between programs.

Section 10.3 Placed in Service

TAAHP requests that a definition of Placed in Service be added and that the definition be consistent with the Internal Revenue Code Section 42 provision, which allows a building to be counted as "Placed In Service" if only one unit in the building has received a certificate of occupancy. TAAHP also requests the TDHCA's carryover documentation be changed so that the language regarding Placed in Service is consistent with the Internal Revenue Code.

Justification: TDHCA's policy on placed in service should be consistent with the federal regulation.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2)(c) Mandatory Community Assets

TAAHP requests that churches or places of religious worship be reinstated as a Mandatory Community Asset.

Justification: Churches are a public service to the surrounding communities. These institutions not only provide support for the spiritual and emotional needs and health of its members in the community, but also provide a myriad of supportive public services to the community. Such services include day care, meals on wheels, counseling, food pantries, immigration and free legal clinics, seminars on health and finances and emergency funds for items such as rent, utilities, medical expenses or car repairs.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(4)(B) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section regarding incidents of violent crime:

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(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com."

Justification: Because neighborhoodscout.com provides inconsistent results, applicants should have the option of obtaining statistics directly from the police department. In those cases where obtaining statistics directly from the police department is difficult, neighborhoodscout.com can serve as the source. This either/or approach provides much needed flexibility for the applicant in obtaining the relevant information.

TAAHP also requests that TAAHP requests that the following section regarding blighted structures be deleted:

~~(iii) The Development Site is located within 1,000 feet of any census tract of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism, that they would commonly be regarded as blighted or abandoned.~~

Justification: This concept of "blight" is too subjective to administer in a consistent way.

TAAHP also requests that this subparagraph regarding schools that have not Met Standard be deleted:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

Justification: Because certain school districts in the larger urban areas struggle to meet the new standards, because they are indeed new standards, this section serves to redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff.

Section 10.101(a)(4)(E) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section:

(iii) The Development is ~~necessary to enable a state, a participating jurisdiction or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD-approved Conciliation Agreement, or a final and non-appealable court order~~ consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the city's or county's HUD consolidated plan.

Justification: Larger cities, like the City of Houston, will not legally be able to provide letters stating that "the Development is necessary to comply with its obligation to affirmatively further fair housing." This statement is too broad and too open to legal interpretation. Instead, cities will be more comfortable confirming compliance with their planning documents.

Section 10.101(a)(5) Common Amenities, Section 10.101(6) Unit Requirements, Section 10.101(7) Tenant Services

TAAHP request that the timeframe be restored to Compliance Period instead of Extended Use Period.

Justification: Extending program participants' obligations in these respects past the compliance period is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff.

Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests the following changes to this section:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation)

Justification: Modern PTAC units are energy and cost efficient, and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.204(14) Non-Profit Ownership

TAAHP requests deletion of the following paragraph:

~~(C) For all Application. Any Applicant proposing a Development with a property tax exemption must include an attorney statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code. A proposed Payment in Lieu of Tax ("PILOT" agreement must be documented as being reasonably achieved."~~

Justification: This adds unnecessary costs to the preparation of an application. Applicants relying on a property tax exemption should do so at their own risk.

Qualified Allocation Plan

Section 11.4(b) Maximum Request Limit

TAAHP requests a new limit for USDA applications of $750,000.

Justification: Most USDA developments are small so a $750,000 cap is appropriate.

Section 11.4(c) Tax Credit Requests and Award Limits

TAAHP requests the following paragraph 2 be deleted in its entirety:

(2) ~~The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMR's) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax Exempt Bond Developments, as a general rule, an SADDA designative would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicant must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.~~

Justification: The Internal Revenue Code allows the 30% boost in DDAs designation to be extended up to 365 days by allowing a project that applied for a bond reservation in one year to close the transaction in the next year. Section 11.4(c)(2) grants the 30% tax credit boost only when the bond reservation certificate is received in the same year as the HUD SADDA designation, which is subject to change annually. The housing site may no longer be included in a SADDA in the year following receipt of the private activity bond allocation reservation. The proposed rule will also force closing 4% bond transactions that access the increase amount of private activity bond allocation after the mid-August housing bond collapse by the end of the calendar year, unduly reducing the already very short 150 day closing timeframe.

Section 11.7 Tie Breaker Factors

TAAHP recommends the following changes to paragraph 4:

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type ~~a development~~. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) *Sponsor Characteristics. Previous Participation Compliance History*

While no consensus was reached on whether this point item should remain in the QAP, there was consensus on needing clarifying language and direction from TDHCA's asset management and compliance division regarding how an applicant determines which category applies. Additionally, this point category should be tied to the category of an applicant as of March 1, 2016, so that there

is clarity within the competitive round in terms of scoring.

(c) Criteria to service and support Texans most in need

(4)(A)(ii) *Opportunity Index*

TAAHP requests that any instance of "77 or greater on index 1" change to "76 or greater on index 1."

Justification: The 2015 data released by TEA indicate the median Index 1 score for elementary to be 76 as opposed to the 2014 data which indicated median Index 1 score for elementary to be 77.

TAAHP also request that the poverty rate for opportunity index be increased to 20% for all areas outside of Region 11 where the poverty rate should stay at 35%.

Justification: This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunity" which will promote further de-concentration of awards. These new census tracts are still first and second quartile census tracts and in many cases have highly rated schools and are closer to services and town centers. This change also helps alleviate the issue that residents living in preservation properties are part of the poverty rate, making their own communities uncompetitive.

(4)(B) *Opportunity Index for Rural*

TAAHP recommends the following to be added to subsection (i) as further clarification on what "services specific to a senior population" might entail:

- Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site);
- Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primary care doctor's offices that accept Medicaid/Medicare, ERs and Hospitals.

(5) Educational Excellence

TAAHP recommends a third scoring tier for educational excellence:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school either all with a Met Standard rating or any one of the three schools with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points);

Justification: This is one area where TAAHP would like to see more point variation. Because it is very difficult to find sites where all three schools have an Index 1 score of at least 77, it would create more variation in scoring if there were other ways to receive partial points.

(6) Underserved Area

TAAHP members had differing opinions on this point category, although members reached consensus on the following language changes to subparagraphs (C),(D), and (E):

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development (2 points);
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development serving the same Target Population (2 points);
(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a Development that~~ which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);

Additionally, TAAHP requests more direction from staff about what would be required in terms of documentation for subsection (F) of this point category. Additionally, TAAHP proposes some language to this paragraph to include leased spaces in addition to newly construction space:

Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and or additional) office space and undergone initial hiring of its workforce . . . .

(7) Tenant Populations with Special Housing Needs

TAAHP requests that the new paragraph A that gives extra points for placing 811 residents in existing units be deleted:

~~Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the~~

~~proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

Justification: A large percentage of developers, even the more established Texas developers with large portfolios, will not qualify for this point creating an unfair competitive advantage for only a handful of developers with a disproportionate number of general population deals.

(8) Aging in Place

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TAAHP recommends the following language in lieu of the language in the published rules.

An Application for an Elderly Development may qualify to receive up to three (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):
a. "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms;
b. 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;
c. Chair height (17 – 19") toilets in all bathrooms; and
d. A continuous handrail on at least one side of all interior corridors in excess of five feet in length.
(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 point):
i. A minimum of 16 hours per week for Developments of 80 units or less;
ii. A minimum of 24 hours per week for Developments of 81 to 120 units; and
iii. A minimum of 32 hours per week for Developments in excess of 121 Units.

9) Proximity to Important Services

TAAHP requests that the radius for rural deals be expanded to 3 miles.

Justification: Residents of tax credit housing in rural areas are reliant on their cars and often services like this are on the outskirts of town, near more major roadways.

(d) Criteria promoting community support and engagement

(5) Legislative Letters

TAAHP requests that positive letters of support from state representations receive +4 points, neutral letters receive 0 points, and letters of opposition will receive -4 points.

Justification: The total point range for these letters will be 8 points, rather than the current 16 point range, thereby making this point range of 8 consistent with the legislative intent of ranking it the lowest point category under the statute.

(7) Concerted Revitalization Plan.

TAAHP requests that this entire section revert back to the 2015 language.

Justification: This re-written section in the current draft is a concern with regard to its high level of subjectivity, especially with specific regard to the requirement that the problems identified have to be "sufficiently mitigated and addressed prior to the Development being placed in service." The current language will only benefit neighborhoods that are at the tail end of the revitalization efforts.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

(2) *Cost of Development per Square Foot*

TAAHP requests that the cost per square foot limitations in this section should be increased by at least $10 per square foot.

Justification: The current draft does not adjust upward for recent construction cost increases which have been in the range of 8% to 12% per annum for the last three years.

TAAHP also requests the following language change:

(E)(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the development is considered a High Cost Development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

Subchapter D – Underwriting and Loan Policy

Section 10.302(d)(1) Operating Feasibility – Income

TAAHP requests that this provision revert to the 2105 language which allowed for market rate rents to be set by the applicant at levels supported by the market study regardless of what percentage market rate units a development had.

Justification: There is no "one size fits all" approach to rents in the various Texas markets. The large urban markets, and not only Austin, are performing very differently than the smaller rural markets, which is why market studies are so important in determining market rents.

Section 10.302(d)(4)(D)(iv) Acceptable Debt Service Coverage Ratio Range

TAAHP requests that the language in this section revert back to the 2015 language.

Justification: TAAHP members do not understand why this change is proposed and would like to better understand the purpose.

Section 10.302(e)(7)(F) Developer Fee

TAAHP request that the following section be deleted:

~~The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

JUSTIFICATION: A new provision has been added that caps the Developer Fee to the amount determined at the original underwriting. We respectfully disagree that a developer's amount of work is the same regardless of the cost of the development. When construction costs are higher than anticipated, the developer has to do considerable more work in terms of value engineering and identifying additional soft costs. Furthermore, the payment of development fee is capped by available sources, so this new rule merely limits basis, placing the developer at higher risk for basis adjusters.

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Subchapter E – Post Award and Asset Management Requirements

Section 10.402(g) 10 Percent Test (Competitive HTC Only)

TAAHP requests that the last sentence of paragraph (2) be deleted:

~~The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.~~

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.
TAAHP also requests that paragraph (5) be amended to require a non-material amendment to admit guarantors that were not identified as guarantors or principals on the Org Charts submitted at the time of Application:

If identified Guarantors have changed from the Guarantors or principals identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors or ~~members~~ principals must be reviewed in accordance with Chapter 1, Subchapter C of this part.

Justification: While we agree that adding new guarantors should require a non-material amendment, such amendment should not be required when the guarantor was listed on the original application as a principal on the owner organizational chart.

Section 10.402(j) Cost Certification (Competitive and Non-Competitive HTC and related activities Only)

TAAHP requests that this revert to 2015 requirement for a 15 year proforma instead of proposed 30 year.

Justification: a 15 year proforma is consistent with the application requirements, and past TDHCA policy at cost certification.

Section 10.405(a) Amendments to HTC Application or Award Prior to LURA recording or amendments that do not result in a change to LURA

TAAHP requests reinstatement of subpart (G) permitting a de minimis increase or decrease in the site acreage without requiring Board approval.

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.

TAAHP request deletion of new subpart (H) defining the following as a material alteration requiring Board approval:

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

~~Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~

Justification: Increases in development costs and changes in financing occur frequently and should be handled administratively as they have been handled in the past.

Section 10.406(d)(3) and (4) Ownership Transfers, Non-Profit Organizations & HUBS

TAAHP membership appreciates the language changes in the proposed rules that provide for greater flexibility in cases where an award was not made out of the non-profit set-aside.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully. I have already reached out to Brent Stewart and Tom Gouris to set up a meeting to review the new underwriting rules and discuss possible alternatives to the problematic sections.

Thank you for your service to Texas.

Sincerely,

Janine Sisak
Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Tom Gouris – TDHCA Deputy Executive Director for Housing Programs
Patricia Murphy – TDHCA Chief of Compliance
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

(4) Alyssa Carpenter

October 13, 2015

Marni Holloway
Director of Multifamily Finance
TDHCA
PO Box 13941
Austin, TX 78711

RE: 2016 Draft TDHCA Rules and QAP Comments

Dear Ms. Holloway:

Thank you for the opportunity to provide comment on the 2016 TDHCA Draft MF Rules and QAP. Please find my comments attached.

Regards,

Alyssa Carpenter

2016 TDHCA Draft MF Rules and QAP Comments

10.101 Mandatory Community Assets

The current draft effectively reduces the number of options for services that can be used to fulfill this section.

While "campus of accredited higher education institution" has been added, "religious institutions," dentistry medical offices, optometry medical offices, and physician offices that are not general practice have been deleted. The residents of HTC developments, especially young children and seniors, should be receiving regular dental and optometry care. I would argue that far more residents would utilize such medical services than utilize a higher education campus. Additionally, many "religious institutions" offer events and services to foster a sense of community and which would not otherwise be reflected in the currently proposed Mandatory Community Assets choices. For example, there is one local church that offers a "senior game day" and lunch every Thursday afternoon while another offers a food pantry the last Friday of every month. These events, which would be of service to residents of HTC developments, should be considered a community asset.

Suggested language change is as follows:

(I) medical office of a general practitioner, licensed physician, dentist, or optometrist; urgent care facility or hospital;

(T) religious institution.

10.101 Undesirable Site Features

The change to (D) of "capable of refining" makes this item further reaching, when I do not understand this limitation to begin with. Why was 2 miles chosen and for what purpose? This language red lines significant portions of Places, such as Texas City and La Marque, for no apparent reason. If the concern is explosion risk, a more appropriate solution would be to require HUD blast zone calculations based on distance to the refinery for properties within 2 miles, with developments outside blast zones and/or that have appropriate remediation being eligible.

Suggested language change is as follows:

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily, unless the Applicant provides evidence of HUD blast zone calculations based on the distance to refinery features and is located outside such blast zone and/or has proposed appropriate remediation.

11.7 Tie Breaker Factors

(3) For competing Applications for Developments that will serve the general population, the Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

It does not make logistical sense to have a tie breaker that only comprehends one population type, when there is a potential to have two tied applications serving two different populations. Considering that Elderly and Supportive Housing populations are impacted by schools with regard to the Opportunity Index and Educational Excellence, and that TDHCA's prior stance on schools and Elderly developments was that highly rated schools are a characteristic of a desirable area, I propose that this tie breaker be considered for all developments.

Suggested language change is as follows:

(3) ~~For competing Applications for Developments that will serve the general population,~~ The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

11.9 Sponsor Characteristics

(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2, 3, or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation. (1 point)

This is a new compliance history system that is already contemplated during the award phase, so also including it as a scoring seems to effectively "double count" this review. 10 TAC Section 1.301 outlines the previous participation review and that Category 1 and 2 applicants will be deemed acceptable by EARAC without further discussion, whereas Category 3 and 4 applicants have to respond to concerns before receiving an award. It was my understanding that the ultimate goal of this procedure was to require developers to fix any issues that were outstanding as a condition of award. As proposed, previous participation would be a scoring item *in addition* to the award review procedure as mandated by 10 TAC Section 1.301. This does not seem reasonable especially when the review and Category designation appears to look back at issues that occurred prior to the implementation of the Category system and which have no ability to correct. We have developers that went through an EARAC review in the 2014, addressed the item, and had to respond to the same item in 2015. We also have developers that had an EARAC review that recommended an award with conditions, and the way that 10 TAC Section 1.301 is written, could continue to be "penalized" for the original issue even though it had been corrected during the award process.

At the very least, I think that using previous participation as a scoring item should be deleted for this year until developers and staff have a better understanding of the implications of the Category system and what exactly is involved in the evaluation. For

example, we have seen previous participation reviews that required responses regarding timely submitted and Board-approved amendments—I do not understand why that would be something that would look “alarming” about a developer when the Rules clearly allow for such an occurrence.

Suggested language change is as follows:

(A) The ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 Points).

~~(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2, 3, or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation. (1 point)~~

11.9 Opportunity Index

For Rural Developments:

(i) Except for an Elderly Limitation Development, the Development Site is located within the attendance zone (or in the case of a choice district the closest) of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);

This language has been changed to make it more difficult to obtain these points and I am unsure of the reasoning. In general, there is no “choice” for a child to attend one school over another, and therefore would not have a choice of attending a school that has a 77+ per subparagraph (B). My understanding was that this item is about distances to commonly utilized or required facilities, and since a family does not have a choice in the rating of the school that they may attend, I do not think this proposed change makes sense. The language from 2015 regarding the general Met Standard rating makes the

most sense and has the most value to families in that the school that the child will attend is close to the development. Furthermore, it does not make sense to basically have two senior center-type scoring items of various points—3 points here and 2 points under (v): (v) The Development Site is located within 1.5 linear miles of a senior center (2 points). Plus, such Elderly application is still being awarded points for a day care center which makes even less sense than a school because a senior can at least use the school's grounds for walking or exercise.

Suggested language change to generally revert to 2015 is as follows:

(i) ~~Except for an Elderly Limitation Development~~, The Development Site is located within the attendance zone (or in the case of a choice district the closest) and within 1.5 miles of an elementary, middle, or high school with a Met Standard Rating. ~~that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points.~~ (For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);

11.9 Educational Excellence

The change to Educational Excellence that proposes 3 points for a site that has all Met Standard schools effectively de-values a site that has all schools that are Met Standard and 77+ (or 70+ for Region 11). In 2015, up to 3 points was awarded with 3 points for all schools that are Met Standard and 77+ (or 70+ for Region 11) and 1 point for at least two of three schools Met Standard and 77+ (or 70+ for Region 11). No points were granted for Met Standard schools of any Index 1 score. The proposed 2016 language awards 5 points for all schools that are Met Standard and 77+ (or 70+ for Region 11) and 3 points for all Met Standard, which means that there is only a 2 point advantage for 77+ (or 70+) schools.

Examining all schools that have an MS or IR rating and excluding those with Alternative or other ratings, less than 8% of schools are rated IR. Of those that are rated IR, many are clustered in one district: for example, over 9% of IR schools are in Houston ISD and nearly 6% are in Dallas ISD. I do not believe that points should be awarded for a rating that has been achieved for 92% of all rated schools. This scoring item should revert to 2015 language to make the scoring item meaningful.

Suggested language change to generally revert to 2015 is as follows:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

(B) ~~The Development Site is within the attendance zone of an elementary school, a middle~~

~~**school, and a high school with a Met Standard rating**~~**. The Development Site is within the attendance zone of an elementary school and either a middle school or high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11) OR within the attendance zone of a middle and high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11). (3 points)**

11.9 Underserved Area

I applaud Staff for considering other options for this scoring item; however, without accurate and objective data, I do not think such options can be included in the QAP.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);
I think this is a good change and will help to remove ambiguity and subjectivity.

(B) An Economically Distressed Area (1 point);
I would propose that this remain 2 points for those applications in EDA areas that do not have an existing HTC development.

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development (2 points);
I believe that this should remain as-is and not be changed to consider whether the Place's existing HTC development serves a different population than the Application. There is already a proposed scoring option for a census tract that does not have a same-population development in 10 years.

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);
This is 2015 language and should remain as-is. There are fewer rural towns with even fewer census tract options than urban areas.

(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point);
I appreciate this option.

(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or

Unfortunately, I am unaware of a consistent subjective data source for this proposed score item. I think any scoring item should consist of publically available data from city, state, or federal sources, and I am not aware of any source that gives detailed information on the salaries of jobs created. The QAP used to have a scoring item that relied on SBA loan and State economic development program data, but data was not that detailed. Furthermore, any scoring item that is not official and accessible is subject to exploitation. I propose that subsection (F) be deleted and that staff and the development community revisit SBA and State incentive programs for consideration in the 2017 QAP.

(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).

Unfortunately, I am unaware of a good consistent data source to use for this proposed scoring item. Complicating this item is the fact that some census tracts changed from 2000 to 2010. For example, 2000 census tracts 32.01 and 33.00 in downtown Dallas combined to make 2010 census tract 204.00. This means that there is no data for census tract 204.00 prior to the 2010 ACS. Other census tracts had general boundary shifts in 2010 that makes any comparisons to data older than 2010 extremely difficult. This will also impact a change in language from “census tract” to “place” (should it be suggested) because places can also annex land and change boundaries thereby skewing results compared to landlocked places. For this reason, I propose that subsection (G) be deleted until more research can be done on a scoring item that has a consistent data source.

11.9 Tenant Populations with Special Housing Needs

(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development’s in the Department’s Section 811 Project Rental Assistance Demonstration Program (“Section 811 PRA Program”). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

This scoring item penalizes new developers and developers that do not have a portfolio that meets Section 811 requirements. I think that there should be some sort of incentive for developers with qualifying properties to participate that does not involve a 1-point scoring advantage. I understand that it is difficult to add new point items to other scoring categories, so one suggestion would be to change all options to 3 points but add language to subsection (A) as an incentive for those who qualify. This could include something such as the following:

(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing

Development in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. Applications electing this subparagraph may request a LURA amendment with no fee to reduce the Extended Affordablity Period by 5 years for the existing Development participating in Section 811 per this subsection.

11.9 Historic Preservation

The separation of the Extended Affordability and Historic Preservation scoring items means that Historic Preservation now has a 5-point advantage and it is probable that a Historic Preservation application with a revitalization plan will outscore a 7-point High Opportunity application with top schools. I understand that Historic Preservation was added to legislation, but considering where this item was added in the legislation, the points proposed are too high.

SB 1316 added the following language:

SECTION 2. Section 2306.6725 , Government Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) 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:

(1) provide quality social support services to residents;

(2) demonstrate community and neighborhood support as defined by the qualified allocation plan;

(3) consistent with sound underwriting practices and when economically feasible, serve individuals and families of extremely low income by leveraging private and state and federal resources, including federal HOPE VI grants received through the United States Department of Housing and Urban Development;

(4) serve traditionally underserved areas;

(5) demonstrate support from local political subdivisions based on the subdivisions ' commitment of development funding;

(6) rehabilitate or perform an adaptive reuse of a certified historic structure, as defined by Section 171.901 (1), Tax Code, as part of the development;

(7) remain affordable to qualified tenants for an extended, economically feasible period; and

(8) ~~[(6)]~~ 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.

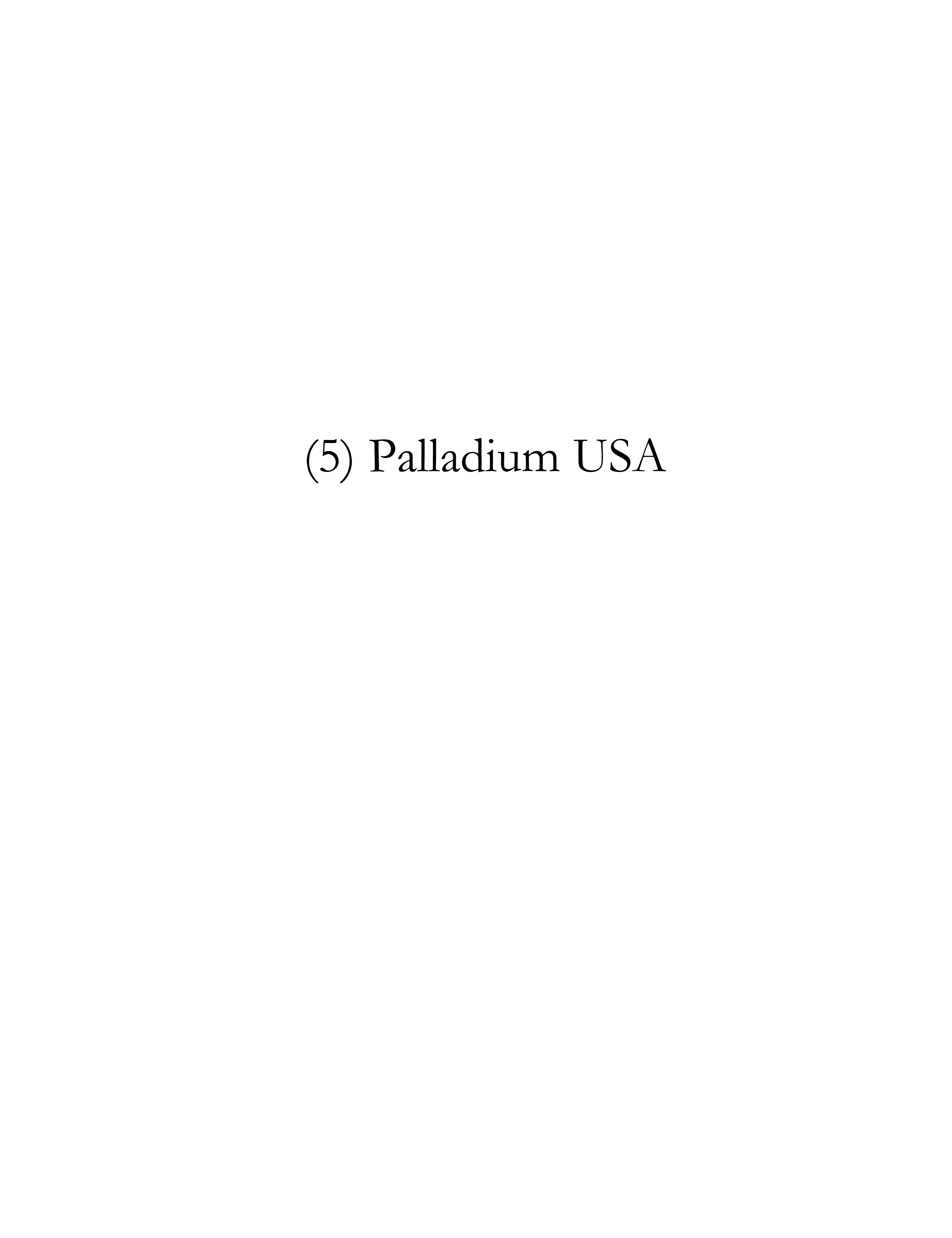
Considering the point values of the criteria items before and after new subsection (6) concerning Historic Preservation, the proposed 5 points should be reduced to 2 points.

Subsections (1) and (2) are addressed with higher points already contemplated under Section 2306.6710(b)(1).
Subsection (3) concerns Leveraging, which is currently valued at up to 3 points.
Subsection (4) concerns Underserved Areas, which is currently valued at up to 2 points.
Subsection (5) concerns Local Funding, which is currently valued at 1 point.
Subsection (6) is in question and is proposed at 5 points.
Subsection (7) concerns Extended Affordability, which is currently valued at 2 points.
Subsection (8) concerns Accessibility and is a threshold requirement.

Based on where Subsection (6) Historic Preservation was inserted into legislation, 5 points is too high and the point value should be consistent with neighboring point items. Additionally, Historic Preservation applications, which are commonly found in areas that are lower income and underperforming, should not be encouraged over High Opportunity applications that are inherently in high income, low poverty, and high performing school areas.

Suggested language change is as follows:

(6) Historic Preservation. (§2306.6725(a)(5)) An Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive ~~five (5)~~ two (2) points.



(5) Palladium USA

October 7, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

RE: Public Comment concerning the 2016 QAP and Multifamily Rules

Dear Teresa,
Our team has spent some time digesting the current draft of the QAP and Multifamily Rules and would like to give some observations and suggestions based on what we believe would be in the best interest of the industry, and will help to deliver the best products at the best locations. We understand staff's intentions to do just that and hope that input such as ours, and others, will be helpful for the Department to gain a better understanding of the real world challenges and consequences we, as developers, face when we submit to current rules in our efforts to get quality affordable communities on the ground.

One basic value that we believe should be guarded in our industry is that each of us as developers, Department staff and consultants must do our part to earn the trust of the people of Texas by consistently placing quality product on the ground and maintaining those properties, as well as maintaining positive relationships in the communities where we serve. All who have developed tax credit properties know the ugly face of NIMBYism and the fear that keeps us out of many cities and neighborhoods across the state. What our industry should be doing is developing relationships with communities in an effort to build trust. That simply cannot be done in the few months after we get the current years rules and have to turn in an application. When new point categories show up each year, it makes relationship and trust building impossible as we, must chase the points. The resulting conversation with cities all over the state is, "trust that we will do what we say, but we need your support today." No wonder NIMBYism wins over and over. Last year in Region 3 we saw every top scoring application flip to the bottom of the region because of a lack of support by cities and State Representatives. I believe we could win over the High Opportunity Areas in our state if we were given enough time to build and earn trust in these communities that fear affordable housing. But, that would take consistency in rule making and point incentives. Many of the proposed changes this year, are causing developers to abandon relationships that have been started to chase new point categories and therefore, is counterproductive to combating NIMBYism and earning the trust of our communities. I believe the Department could place new incentives each year to refine new targets without de-incentivizing high scoring areas of the previous year and my following comments are an effort to propose changes to that end. In the end, we all win when any developer in our industry earns the trust of a community and delivers a product that is consistent with the message.

11.9(c)(6) Underserved Area
First, and of high importance, is the addition of multiple ways to gain Underserved Area points. It seems the intention of additional point categories here are to help fast growing areas get a point incentive.

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However, the current language creates a disadvantage to traditional underserved areas as defined in (C). Item (C) defines an underserved area as a place that has never received a tax credit allocation before. Many of these places are High Opportunity Areas with great schools in urban regions and the likelihood of NIMBYism in these areas is very high. Therefore, often, it takes multiple years of working with these communities in order to develop a relationship in order to earn their trust.

First, Item (E) states that a point may be gained by an application that is in "a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population." **This rule is simply too easy**. The reality is that most census tracts across the state fit this category and this creates a free point to be made up against traditional underserved areas as defined in (C), which are significantly harder to pursue. We propose that Item (E) be deleted in its entirety as it offers no benefit and its real effect is that it makes traditional underserved areas lose part of its advantage.

Second, it is understandable and may be worthwhile to create an incentive that promotes significant growth as a point category. However, item (F) is too vague and broad in its intentions. Item (F) grants one additional point to an application "within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located." Five miles is significant and too wide. A five mile distance creates a 10 mile circle around a development. That area is larger than most communities in Texas. If the incentive is to be in an area of significant new growth, make the incentive to be in the area. Therefore, limit the point category to be within one or two miles. Second, there seems to be a problem with definitively proving this point item to be true. What data set is the Department going to use to verify? We all know developers will work to the specific language in the rule and if the rule does not define, then letters from managers and chambers of commerce offering opinions and therefore, speculation, could be submitted. Therefore, I propose that item (F) be omitted and only item (G) remain as an incentive for applications locating in areas of significant growth as item (G) can be definitive in its proof.

11.9(c)(9) Proximity to Important Service

This category is a perfect example of the type of new rule that causes developers to abandon relationships in order to chase new points in order to be competitive. While the intention to locate development near important services is simple and clear, the distance will cause developers across the state to abandon good sites and relationships because they do not fit in this new category. I get and appreciate incentives that create separation in scoring, which this category helps to do. Therefore, I propose that this rule be revised to be similar to the spirit of the previous drafts language but instead of a threshold item, to remain a point incentive item. My suggestion is that a point incentive be given to applications that are within 3 miles of all three of these important services: Full Service Grocery Store, Pharmacy, and a Medical Office or Urgent Care Facility including hospitals. This refinement of the rule will help to incentivize development located in proximity to important services and will keep the point item hard to obtain, but will not arbitrarily limit to one mile.

10.101(a)(2) Mandatory Community Assets

Many of us here in the great State of Texas believe that churches offer support and the type of community values that are important to our residents. Churches offer programs and activities for children all the way through seniors and are an important part of any vibrant city. Therefore, we propose that churches be added back to the list of Mandatory Community Assets as proximity to churches can be an incredibly valuable asset to any property.

It is evident that staff is working diligently to deliver a QAP and Multifamily Rules that will outline criteria to incentivize positive development in the best locations. The suggestions above are our efforts to add a voice to those efforts. Thank you for your thoughtful consideration.

Sincerely,

Ryan Combs
Palladium USA

(6) Chris Boone, City of Beaumont

From: CBoone ci.beaumont.tx.us
To: Teresa.Morales tdhca.state.tx.us
Subject: 2016 Draft QAP Part II from Beaumont
Date: Tuesday, October 13, 2015 8:29:43 AM

Ms. Morales,

In addition to the comment sent yesterday on the Draft QAP, we would also request that the rule (Subchapter B--10.101.(a)3:(D)) be modified from two (2) miles to one and one-half mile (1.5). We feel that this would be a more reasonable distance requirement from the Exxon/Mobil facility that has been operating safely since 1903, employs more than 2,000 employees and is located on a transit route.

Given the extent of the petro-chemical and industrial base of our economy, a reduction in this distance requirement would be recommended. In addition, as mentioned, this extensive distance requirement would preclude our entire redeveloping downtown. Some particular sites that we would encourage affordable housing is in our new Downtown's Lake District, directly opposite our new $7 Million Senior Activity Center, skate park, lake and playground. By adjusting this distance requirement by only one-half mile, this redeveloping area would then be eligible for development.

If you need any additional information, please let me know.

Thanks,
Chris

Christopher S. Boone, AICP
Director of Planning & Community Development
City of Beaumont
801 Main, Suite 201
Beaumont, Texas 77701
(409) 880-3100
(409) 880-3133 Fax
cboone@ci.beaumont.tx.us

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----- Forwarded by CHRIS BOONE/CITYBMT on 10/13/2015 08:10 AM -----

From: CHRIS BOONE/CITYBMT
To: Teresa.Morales@tdhca.state.tx.us
Date: 10/12/2015 02:34 PM
Subject: 2016 Draft QAP

Ms. Morales,

I am writing regarding some ambiguity in the proposed 2016 QAP.

Specifically, Subchapter B--10.101.(a)3:(D)

states: "Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily;"

The concern that we have is how, specifically, is how the measurement to the "hazardous uses" would be done. We are working to redevelop our downtown and see affordable housing as well as market-rate housing being an important important to that redevelopment. Exxon/Mobil is located to the east of Downtown, but if staff were to measure from the Exxon/Mobil property (parking lots, etc.), this would exclude most of downtown from the process. If the distance were measured to the refining equipment and tanks (presumably to source of concern), then the two-mile requirement could be met and still allow the affordable units. We feel a clarification of this rule would be in the best interest of all parties.

If you need any additional information or clarification, please let me know.

Thanks,
Chris

Christopher S. Boone, AICP
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(7) Rural Rental Housing Association of Texas

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

RRHA of Texas Comments to the 2016 QAP **October 12, 2015**

The Rural Rental Housing Association of Texas (RRHA of Texas), an organization made up of 701 existing USDA properties in rural Texas, is submitting a response to the published 2016 Qualified Allocation Plan. Texas has the largest number of 515 properties of any state and the Association Members have in common an interest in preserving these properties, and continuing to serve the residents. Secondarily, the RRHA Members have an interest in new construction in rural areas, and we will comment on this separately.

The preservation of rural apartments, and the construction of new apartments in rural areas, require different strategies. TDHCA has made some of the most altering changes to this QAP for preservation of existing properties, which would have a significant impact on losing ground with preservation. We would like to respond to each of these issues and products (new construction vs preservation) in our remarks.

Preservation of Rural Housing

RRHA of Texas requests that TDHCA consider a bold, long-term preservation policy for existing housing that continues to serve residents and communities. This policy will become more important as the USDA properties become older, as elderly-population and mixed-population properties age, and as tax credit compliance periods expire. In that policy, we recommend a firm determination and measure of preservation need for the apartment project, and within the community. Many States provide priority points and reward preservation in their Tax Credit Qualified Allocation Plan and we suggest a review of policies of other states. RRHA of Texas will be pleased to participate in, and even lead that study and documentation of findings. Currently, this distinction is not evident in the 2016 draft QAP.

USDA Set-Aside (2306.11(d-2)

This year, TDHCA has recommended that new construction funding for the USDA 514/516 program be added to the USDA set-aside. They have recommended that **new construction**, and a 514/516 program that permits funding from **both urban and rural settings** compete with the existing and aging Rural USDA 515 properties. While RRHA agrees that the Farmworker housing is deserving, underserved, and should be funded, it has made the preservation of USDA 515 properties even more difficult by allowing new construction to compete with existing product. Absent a formal preservation policy for TDHCA, and the current practice of providing point priorities to high opportunity areas, we agree this may be the only way to fund farmworker housing.

The 2015 Tax Credit application for farmworker housing, using USDA 514 funds for new construction, requested $816,330 in credits and would have taken 26% of the available funds in the USDA Set-Aside. This would take funds from the already difficult preservation efforts. While farmworker housing is deserving, this is an unacceptable reduction in a USDA preservation set-aside where we are losing ground in the goal to preserve USDA units. The RRHA of Texas has conducted a survey within its membership of 515 existing units and received a 53.3% (nearly 13,000 units) response rate for all units in Texas and found an approximate and immediate need of $635,565,000 in preservation hard-cost funds for just over 75% of all units. The results of this survey will be attached to our comments.

Based on the TDHCA staff recommendation in the QAP draft to add USDA 514/516 new construction as a competitive application to the Set-Aside, RRHA of Texas recommends the following additions:

1) **A maximum of $750,000 award per project in the USDA Set-Aside.**
2) **A limit on one New Construction award from the USDA Set-Aside in each Tax Credit cycle for the USDA 515 and 514/516 properties.**
3) **Continued prohibition of USDA 538 new construction funding in the Set-Aside, unless there is an existing USDA 515, 514 or 516 debt attached to the property.**

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4) **Future consideration of a minimum of 10% of available funds to be Set-Aside for USDA properties, with considerations for a TDHCA comprehensive preservation policy and priority points reflecting rural preservation priorities.**

RRHA also supports a limitation of $1.5 million in the At-Risk Set-Aside, other than USDA.

11.9 Competitive HTC Selection Criteria-Preservation

(4)(B) Opportunity Index for Rural Properties-Preservation

RRHA of Texas requests that TDHCA **delete the current reward qualifiers of 1st and 2nd Quartiles** for existing rural properties in the set-asides. Existing properties have fixed locations and can not be moved. We would rather see a tiered point system for quartiles 1 and 2; and for quartiles 3 and 4 in this 2016 QAP. In future years we suggest the same number of points with **a letter from an elected official in the community stating that the existing property continues to serve their community by housing residents, and that the residents and the community would benefit by rehabbing/updating the properties. This would measure service to community, and preservation need on existing properties rather than location as is now measured in new construction.**

It is important for TDHCA to recognize that USDA Rural Development does not permit the use of rent proceeds for on-site or off-site services. Requiring an existing USDA 515 property to provide on-site services is going to require a creative financial challenge for the property. **We recommend instead adding upgrades to the existing property such as accessibility, laundry room, or community room, or upgrades to unit amenities as a replacement point category.**

The distance from rural amenities is measured for new construction that have choices in location of site, and not existing units that are fixed in location. New super stores are coming into rural communities and displacing smaller businesses. **We therefore recommend that distance for existing properties to all amenities is 3 miles.**

(5) Educational Excellence-Preservation

(B) Tiered scoring for schools is more acceptable than previous QAP requirements. We **recommend adding a mitigation for schools that have not Met Standards in rural areas, specifically an approved work out plan for 2 points.**

(8) Aging in Place-Preservation

The Current Draft has included a new category to receive up to 3 points by:

1) Making all units fully accessible (2 points)
2) Employing full time resident services coordinator (1 point)
3) Proximity to important services (2 points)

It is not possible to adapt all existing units in a USDA 515, 514/516 property to full accessibility. Moreover, not all residents want an adapted unit—they are difficult to rent to residents who do not require disabilities accommodations. Accommodations are required and should continue to be made where reasonable. We urge TDHCA to delete the concept of fully accessible. Additionally, as we mentioned earlier, USDA does not permit rent proceeds to be used for on-site services, and we recommend deletion of a full time resident services coordinator. Proximity to important services needs to be further defined, an existing property can not be relocated to achieve the Departments new construction goals. We recommend the Department focus on priorities and points for existing properties as a separate category.

New Construction and Preservation

(6)(f) Underserved Area—preservation and new construction

RRHA is concerned with the Departments ability to verify points for new business, new hires, and to require new construction. **We urge the Department to expand this category to include business expansion and addition of employees and space. Business expansion can be proven with construction plans, or site acquisition, and verification of business hires can be provided by the HR department of the expanding business.**

(7) Tenant Population with Special Needs-preservation and Rural New Construction

The permissible goal of allowing points for 811 units in properties other than the property in the current application round places existing rural properties at a disadvantage, and penalizes newer developers, developers from other states, and USDA developers who have focused their entire development career on constructing, managing, and maintaining rural properties. **This category needs to be eliminated in the USDA Set-Aside and for all rural properties as it serves no purpose but to reward developers with urban properties who convert to 811 units. Furthermore, when TDHCA develops a workable policy to accommodate the 811 funds, it should not further penalize the preservation of USDA units.**

(8) Aging in Place (B) "The Property will employ a full-time resident services coordinator on site ...(I) a minimum of 16 hours per week for Developments of 79 Units or less..."

Per our earlier comment under 4(B) Opportunity Index, USDA does not permit properties to use project funds to pay for services, and so it will be impossible for any USDA property to get these points. A smaller property cannot afford a full time service coordinator, even at 16 hours per week. We recommend language instead requiring the "**property will provide appropriate services for elderly residents with at least one event per month." We recommend instead adding upgrades to the existing property such as accessibility, laundry room, or community room, or upgrades to unit amenities as a replacement point category.**

Tie Breaker

The last tie breaker measures the proximity to the next closest tax credit property. We recommend instead the previously proposed language **measuring the distance to the next closest tax credit property of a like-kind resident population."**

Definitions—Preservation and New Construction

Elderly Development

We are requesting TDHCA to clarify Elderly Development and Elderly Preference Definitions, particularly as they relate to Project Based Section 8 and USDA 515 properties. These definitions appear to conflict with some of the existing rules. RRHA is requesting not only clarification, but explanation and policy behind the changes. We see the definition changes as detrimental to some elderly developments and unless there is substantiated policy reason for the change, we recommend the definition of elderly revert back to the 2015 QAP.

Rural Area

RRHA would like to clarify that USDA 515 projects originally built in qualified rural areas, will continue to qualify as rural properties under the USDA Set-Aside for preservation purposes, providing the project retains the USDA 515, 514/516 funding.

Thank you for the opportunity to comment on the above changes to the 2016 QAP.

Respectfully,

Angie Ruddock, President, RRHA of Texas

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

515 Survey Results

Results of the USDA 515 Property Condition Survey conducted by the Rural Rental Housing Association of Texas, is a significant sampling of USDA 515 properties and can be used to make certain assumptions about the condition of the overall portfolio in Texas—the largest number of properties in any state in the U. S. According to Jonathan Bell of Rural Development in Texas, there are 705 properties and 24,212 units that make up the Texas USDA 515 portfolio. Based on the universe of potential respondents, we have information from 341 properties, or 48.3% of all properties; and 12,914 units or 53.3% of all units in Texas.

The property owners were asked to assess the condition of their own portfolio hard cost needs in $10,000 increments to determine USDA preservation funding needs for Texas. They were also asked about the age of the property—when it was first placed in service, along with a few other questions.

The respondents to the survey are RRHA of Texas members who make up the vast majority of USDA 515 properties in Texas. Thus, we can conclude over 75% of all units in Texas need rehab in the amount of $20,000-$50,000 per unit, or an average of about $35,000 in hard construction costs. That immediate need would amount to approximately $635,565,000.00 plus all necessary program and financing costs. Fifteen percent of all units, or about 3,632 units need no rehab, or have been recently rehabbed.

The results follow.

Overall, the per unit rehab needs were fairly evenly divided among the $20,000-$30,000 (3344 units or 26%); $30,000-$40,000 (3306 units or 26%); and $40,000-$50,000 (3146 units or 24%), making $20,000-$50,000 a common amount of hard cost rehab requirement. No financing costs, construction interest, architectural and engineering, developer fees, etc. were included in these estimates which can add substantial cost per unit to rehab the properties. Because the type of financing fees for rehab can vary depending on the source of funding, it was not included in the estimates. Fifteen percent (15%) of all respondents units (1969 units) have been recently rehabbed, or need no rehab, and 1011 units (8%) need less than $20,000 in rehab. Thirty-six units (36) or 0.3% need more than $60,000 per unit in rehab.

The age of the properties was most frequently 15 to 35 years old, with nearly 20% more than 35 years old. Sixty (60) properties, or 18% were placed in service prior to 1980; One hundred thirty-eight (138) or 40% were placed in service between 1980-1990; One hundred twenty-five (125) or 37% were placed in service between 1990-2000; and the remainder were placed in service after 2000.

Other information reported on the survey: Thirty (30) properties were the only properties in town—9% of all responding properties. Fifty-seven (57) properties need laundry rooms—17% of all responding properties. Ninety-eight (98) properties need a community room—29% of all reporting properties.

These facts, along with the scarcity of preservation funding, and the competitive nature of the available funding sources, make this a challenge for which we need to find new solutions if these properties, the rural communities in which they're located, and the residents who live in them, are to continue to have decent, affordable apartment communities.

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(8) Fountainhead Management, Inc.

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October 13, 2015

Texas Department of Housing
And Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

sent via email to: Teresa.Morales@tdhca.state.tx.us

Re: 2016 Draft Qualified Allocation Plan Comments

Dear Ms. Morales:

I appreciate the opportunity to submit my comments on Section 11.9 (c)(2) of the Qualified Allocation Plan.

The legislature has mandated that priority points must be given based on the rent levels of tenants. I suggest that the proposed draft fails to follow the legislative mandate by coupling rent levels with the status of the owner or other factors that could be more appropriate for another lower scoring aspect of the rule. Subsection (A) of the rule grants the highest priority to a Qualified Nonprofit or a development participating in the City of Houston's Permanent Supportive Housing Program. Whether one is a non profit or participating in some city's programs are not aspects of rent levels of tenants. As the then Attorney General of Texas when reviewing an earlier QAP: "Nor does section 2306.6710(b)(1) authorize the Department to adopt additional criteria or to give higher priority or greater weight to any other criteria." GA-0208, page 6. The plain language of the statute relates to rent levels of tenants. The points allocated must be based on the rent levels of the tenants and not include other factors that are included in other lower scoring categories.

Conceptually, the governing statute only states that the category is "rent level of tenants". A logical assumption is that the legislature approved of lower rents. But it questionable whether the legislature intended for points be given to developments that are increasing the rents of low income residents in order that even lower income residents would have lower rents. As drafted, significant points would be allocated to the developer that over charges the majority of the residents in order to lower the rents charged to some selected residents. Thus, the Departments is rewarding the development owner that does nothing more than cause a significant portion of the population to pay more rent than would otherwise be paid. Why not reward the development that is actually bringing something to the project that does not cause some tenants to pay more than is necessary by obtaining project based rental assistance for the 30% AMGI. The developer that is

able to serve the 30% population without negatively impacting the remaining residents should be rewarded with more points than one merely robbing Peter to pay Paul. To me, a household at 50% or even 60% of AMGI should be forced to subsidize other residents. Since it is the developer that wants the points the developer that should figure out how to subsidize the 30% households or pay for the subsidy itself and not merely effectuate an unknowing transfer of funds from one tenant to another.

Thus, I suggest that 11.9(c)(2) be revised to read as following:

"(2) Rent levels of Tenants. An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to # of units at 30% times 12 times the number of years in the affordability period times times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 13 points.

(B) At least 10 percent of all low-income units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low income Units at 30 percent or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to # of units at 30% times 12 times the number of years in the affordability period times times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 11 points.

(C) At least 5 percent of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to # of units at 30% times 12 times the number of years in the affordability period times times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 7 points.

A similar argument can be made to subsection (c) (1) to only reward the development where the developer is subsidizing the tenants or has secured the long commitment from a third party government or private source to subsidize the extremely low income tenants without causing other low income tenants to pay more than is necessary for housing.

In the rush to aid a few, let's not forget that the remaining households are also struggling and should not be made to pay for their own housing plus a portion of their neighbors.

Very truly yours,

Patrick A. Barbolla

(9) Dennis Hoover

From:	Kim Youngquist
To:	Teresa Morales (teresa.morales tdhca.state.tx.us)
Cc:	Raquel Morales; Dennis Hoover
Subject:	2016 Elderly and ADA
Date:	Tuesday, October 13, 2015 11:08:30 AM
Importance:	High

Good Morning Teresa,

After a discussion with our Supervisors, and Management Directors concerning the point directive below for aging in place, we would like to summit a suggestion as a point alternative to the Educational Excellence criteria.

We greatly appreciate that staff recognizes the need for this alternative for the elderly properties. However, it would be more realistic for these properties that are applying for rehabilitation to have an alternative version to the 100% ADA units for 2 points.
As you realize already, it would be extremely costly to convert 100% of the units to these standards. The cost at a minimum runs around $10,00 to $15,000 to do a full ADA conversion. Also, in our experience over the years of managing and rehabbing aging in place units, we have found that it is actually physically impossible to make the space in the bathrooms to meet the standards. In summary, it would take funds away from much needed rehab needs on these properties. Most are over 30 years old and already have limited funds to work with. We currently own and manage a total of 90 properties, 34 of which are elderly. Please consider our suggestion based on our experience with these types of properties, and our listening to the comments received from our tenants residing in these elderly properties.

We would like to propose that an additional 5% of the total units be converted to the ADA standards. This includes lower cabinets, roll in showers, etc. This 5% would be in addition to the already required 5% for a total of 10% of the total units (still leaving 2% designated for visual and hearing impaired units).
In addition, convert 50% of the bathtubs to roll in showers. These two items, 50% Tub exchange to Roll in, and an additional 5% converted units to ADA standards would be worth the 2 points. We believe this would be a financially better use of funds from the Tax Credit Allocation and, would meet the tenants needs, and wants more accurately.

We truly appreciate your consideration of our suggestions for revisions to this two point item. Please call Dennis Hoover or myself if you have any questions.

Thank you Teresa for all you do,

Kim Youngquist
HVM
512-756-6809 ext. 218

(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development may qualify

to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points).

(B) The Property will employ a full-time resident services coordinator on site for the duration of the Compliance Period and Extended Use Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (1 point):
(i) a minimum of 16 hours per week for Developments of 79 Units or less; and
(ii) a minimum of 32 hours for Developments of 80 Units or more.

From:	Dennis Hoover
To:	Teresa.Morales tdhca.state.tx.us
Cc:	Kim Youngquist; Nan Boyles; Emily Farmer
Subject:	QAP comment
Date:	Monday, October 12, 2015 11:35:06 AM

Teresa,

We sincerely appreciate the hard work and responsive attitude that we get from TDHCA staff, especially on working through this QAP comment process. I heard the same sort of comment last week from one on the CPA firms that have done Cost Cert work over the years. So, your dedication doesn't go unnoticed.

Hamilton Valley Management supports the comments as submitted by RRHA.
RRHA also made this following comment, but we want to reiterate it:

Tie Breaker

The last tie breaker measures the proximity to the next closest tax credit property. We recommend instead the language (also proposed in previous years) **measuring the distance to the next closest tax credit property of a like-kind resident population.**

Dennis Hoover
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(10) Houston LISC

October 14, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941
Email: Teresa.Morales@tdhca.state.tx.us

RE: Comments on Proposed Revisions to 10 TAC Chapter 11, 2016 Housing Tax Credit Qualified Allocation Plan - 10 TAC 11.9 d 7 Concerted Revitalization Plan

Ms. Morales:

Houston LISC generally concurs in the proposed revisions to Subsection (i) (I-III). These dictate that the concerted revitalization plan must have been adopted by the municipality or county in which the site is located, that the problems identified in the plan be identified via a public process, and what problems and elements generally should be considered in the plan.

Houston LISC does not support the requirements of Subsection (i) (IV) that the funding for implementation of the plan be such that the problems identified in the plan be solved prior to the Development being placed in service. As proposed, this requirement would mean that investment in affordable housing would come very near the end of the revitalization process and not before. While we would concur that investment in affordable housing should not necessarily occur at the beginning of the revitalization process moving it to the end (1) negates the positive impact affordable housing development can have on an area that is on a positive revitalization trajectory and (2) may make impractical the purchase of the land for an affordable housing development project due to rising land costs in an area that is at the end of its redevelopment cycle.

We believe the language used in the most recent QAP (2015) is more appropriate. This language dictates that "the community revitalization plan must already be in place" and that "funding and activity under the plan has already commenced".

We would therefore propose that Subsection (IV) be revised to read as follows:

> (IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timeline. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be mitigated within a period of time commensurate with the plan's timeline prior to or after the Development has been placed in service.

Houston LISC does not support the language proposed for Subsection (ii) (II) relative to a city or county only be allowed to nominate "one single Development during each Application Round". In a major urban city or county to pre-suppose that there is only a single Development that most significantly contributes to the revitalization efforts of the city or county appears to underestimate the revitalization needs of these urban areas. Houston LISC would propose that this Subsection be revised to read as follows:

> An urban classified city or county may identify no more than three (3) Developments during each Application Round for the additional points under this subclause.

I am glad to provide any needed clarification to our remarks as necessary. I can be contacted by phone at 713.597.6839 or via e-mail at rfiederlein@lisc.org.

Thank you-

Robert Fiederlein
Senior Program Officer

xc: Matt Hull, TACDC

(11) Alan Warrick, San Antonio City Councilman

CITY OF SAN ANTONIO

ALAN E. WARRICK, II
CITY COUNCILMAN, DISTRICT 2

October 9, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:
I am writing to request your consideration to make changes to the QAP metrics regarding points for Educational Excellence. In this letter, I will convey why I strongly believe At Risk developments with Choice Neighborhood Funding should receive 3 points for Education excellence, regardless of their actual school scores.

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood, in which I have the privilege of representing. There is currently a very well-coordinated revitalization effort with multiple initiatives underway in this area. Promise Neighborhoods are place-based efforts to wrap children in integrated, coordinated, high-quality academic, social, and health programs and supports from the Cradle to College to career. Strong schools are core to every Promise Neighborhood, as is family and community engagement. We are actively executing a multifaceted approach needed so that all children have access to resources that ensure they are healthy, their families are strong, and they live in safe homes and supportive neighborhoods. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by Mayor Ivy Taylor and referred to as the "EastPoint Initiative."

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee.

In order to be designated a CNI, Housing Authority applicants have demonstrated that the targeted community needs assistance in multiple arenas, including housing, education and social services and has developed a community driven "Transformation Plan" that addresses those needs.

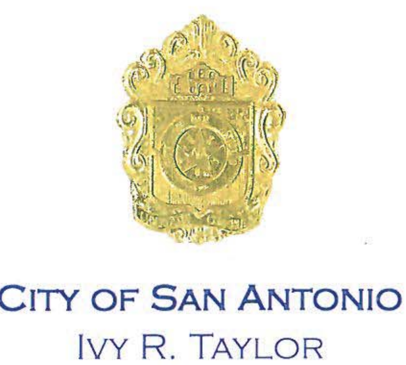
As City Councilman for District 2, I am committed to the Wheatley Redevelopment Project and understand that stable quality housing is vital to successful learning.

It is for this reason, that I support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive 3 points.

Sincerely,

Alan E. Warrick, II
Councilman - District 2

(12) Ivy Taylor, Mayor of San Antonio



CITY OF SAN ANTONIO
IVY R. TAYLOR
MAYOR

October 9, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:

I am writing to request changes to the QAP regarding points for Educational Excellence. At Risk developments with Choice Neighborhood Funding should automatically receive 3 points for Education excellence, regardless of their actual school scores.

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood. There is a very well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by me, Mayor Ivy Taylor and referred to as the "EastPoint Initiative.

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): -a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee.

In order to be designated a CNI, Housing Authority applicants have demonstrated that the targeted community needs assistance in multiple arenas, including housing, education and social services and has developed a community driven "Transformation Plan" that addresses those needs.

The City of San Antonio has been a committed partner in creating a neighborhood of Choice where families and children thrive. Over the last several years, this

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community has seen investment and improvement in not only the physical appearance of the community but more importantly in the lives and education of the children we serve. Much work has been done through this collaborative and there is much more planned to help improve education and the quality of life for families in EastPoint. Stable housing is an important part of a child's ability to be successful in school and the City of San Antonio supports the Wheatley redevelopment project.

It is for these reasons that we support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive 3 points.

Sincerely,

Ivy R. Taylor
Mayor

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Mayor.IvyRTaylor@sanantonio.gov

(13) Pedro Martinez, San Antonio Independent School District

San Antonio Independent School District

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Office of the Superintendent

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Superintendent

October 9, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:

I am writing to request changes to the QAP regarding points for Educational Excellence. At Risk developments with Choice Neighborhood Funding should automatically receive three (3) points for education excellence, regardless of their actual school scores.

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood. There is a very well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by Mayor Ivy Taylor and referred to as the "EastPoint Initiative." EastPoint encompasses three program areas: 1) the Wheatley Courts Choice Neighborhood Initiative (CNI), 2) the Eastside Promise Zone, and 3) the "Eastside Transformation Neighborhood."

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): -a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee. The Choice Neighborhood Initiative is a central part of the NRI, an interagency partnership between HUD and the Departments of Education, Health and Human Services, Justice and Treasury to support locally driven solutions for transforming distressed neighborhoods. The NRI acknowledges the interconnectedness of many factors in revitalization, including housing, education, adequate infrastructure, economic development, and safety, and promotes breaking the Federal government "red tape" to coordinate revitalization efforts locally.

In order to be designated a CNI, Housing Authority applicants have demonstrated that this targeted community needs assistance and has developed a community-driven "Transformation Plan" that addresses multiple arenas, including housing, education and social services.

San Antonio Independent School District does not discriminate on the basis of race, religion, color, national origin, sex, or disability in providing education services, activities, and programs, including vocational programs, in accordance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972; section 504 of the Rehabilitation Act of 1973, as amended.

CNI requires a robust partnership of stakeholders and the San Antonio Independent School District is one of them. Incremental progress has put the district in a position to set aggressive goals that will result in a high-quality education for every SAISD student. Over the next five years, high expectations will drive every action, as we focus on meeting rigorous self-imposed standards that exceed those set by outside agencies. The district is ready to heighten its expectations, thanks to the groundwork laid by previous administrations and our partnerships with Choice and Promise Neighborhoods.

In recent years, SAISD has made significant strides towards excellence:

- Our district has established very aggressive academic goals over the next five years, including 90% of our students graduating and at least 80% attending college.

- Our graduation rate has increased from 69% to 81% in the last five years.

- We have established a community school at Wheatley Middle School, which provides families educational and training opportunities and quick access to service agencies, in addition to providing enrichment programs for students.

- The vast majority of 22 major school renovations were completed this summer as part of Bond 2010.

- SAISD's Young Women's Leadership Academy, San Antonio's only public all-girls school, has been named a 2015 National Blue Ribbon School, based on its overall academic excellence. It is the only school in Bexar County to receive this honor and among 303 public and private schools in the country selected as exemplary high-performing schools.

- We opened St. Philip's Early College High School with San Antonio ISD, our second early college high school, in August 2014. This early college high school, which draws students from across the entire district, is situated adjacent to the Eastside Promise Neighborhood. In August 2015, SAISD opened a third early college high school as a school-within-a-school at Brackenridge High School.

- SAISD's Young Men's Leadership Academy, which opened in August 2015, is the city's first public all-boys school, providing grades 4-8 an environment where students have the space to develop positive self-esteem and sense of self-identity.

It is for these reasons that we support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive three points.

Sincerely,

Pedro Martinez
SAISD Superintendent

San Antonio Independent School District does not discriminate on the basis of race, religion, color, national origin, sex, or disability in providing education services, activities, and programs, including vocational programs, in accordance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972; section 504 of the Rehabilitation Act of 1973, as amended.

(14) United Way of San Antonio

United Way of San Antonio and Bexar County

Doing what matters.

October 9, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:

I am writing to request changes to the QAP regarding points for Educational Excellence. At Risk developments with Choice Neighborhood Funding should automatically receive 3 points for Education excellence, regardless of their actual school scores."

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood. There is a very well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by Mayor Ivy Taylor and referred to as the "EastPoint Initiative."

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): -a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee. The Choice Neighborhood Initiative is a central part of the NRI, an interagency partnership between HUD and the Departments of Education, Health and Human Services, Justice and Treasury to support locally driven solutions for transforming distressed neighborhoods.

In order to be designated a CNI, Housing Authority applicants have demonstrated that the targeted community needs assistance in multiple arenas, including housing, education and social services and has developed a community driven "Transformation Plan" that addresses those needs.

In just a few short years, Eastside Promise Neighborhood (EPN) has been able to:

- increase the quality and availability of neighborhood early childhood development programs
  - In SY 2014-2015, 93% of three year old children demonstrated age appropriate functioning in multiple domains compared to 53% in SY 2012-2013
- incorporate a rigorous STEM curriculum into the EPN schools which has led to significant increases in student STAAR performance
  - All three EPN partner elementary schools exceeded the district's science STAAR scores in SY 2014-2015
- provide academic and family supports to help the high school graduation rate increase
  - From 46% in SY 2009 (prior to grants) to 80.7% in SY 2013-2014

It is for these reasons that we support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive 3 points.

Sincerely,

Mary Ellen Burns
Senior Vice President

700 South Alamo • Post Office Box 898 • San Antonio, Texas 78293-0898 • 210.352.7000 • FAX 210.224.4245 • www.UnitedWaysatx.org

(15) Congressman Lloyd Doggett

LLOYD DOGGETT
35TH DISTRICT, TEXAS

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON
HUMAN RESOURCES
RANKING MEMBER

SUBCOMMITTEE ON
SOCIAL SECURITY

SUBCOMMITTEE ON
OVERSIGHT

LLOYD.DOGGETT@MAIL.HOUSE.GOV
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Congress of the United States
House of Representatives

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October 9, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:

I am writing in strong support of changes to the QAP regarding points for Educational Excellence. At-Risk developments, like the Wheatley Courts, should be eligible to receive 3 points for Education Excellence, since they receive Choice Neighborhood funding.

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood, an area that I represent. There is a well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by San Antonio Mayor Ivy Taylor and referred to as the "EastPoint Initiative."

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee.

In order to be designated a Choice Neighborhood, Housing Authority applicants must demonstrate that the targeted community needs assistance in multiple arenas, including housing, education and social services, and develop a community driven "Transformation Plan" that addresses those needs.

I have long been an advocate to advance the cause for social justice for working Texas families through my commitment to health care, public and higher education, civil and human rights, and social practice. While there is still work to be done to improve the schools in EastPoint, I have witnessed the progress that has been made in this community and in the lives of the families that live there through the Choice, Promise and Byrne Initiatives. Children are being educated through Early Headstart Programs and entering Kindergarten ready to learn. I understand graduation rates have improved and more and more students are leaving high school ready for college.

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There is still more work to be done and this community is committed to the Transformation Plan it created to improve the quality of life for all. It would be unfortunate for our families and this community if the final phase of the revitalization of Wheatley Courts was penalized despite the tremendous efforts and strides that have been made to provide a better education and quality of life for our children.

Please give fair consideration to the revision of the Texas Department of Housing and Community Affairs's draft 2016 QAP regarding points for Educational Excellence, so that applications for housing developments which qualify in the At-Risk pool, that have a nationally-recognized educational initiative in place, and/or receive funding from a HUD Choice Neighborhood Initiative, would be eligible to receive 3 points.

Sincerely,

Lloyd Doggett

(16) VIA Metropolitan Transit
San Antonio

October 14, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:

I am writing to request changes to the QAP regarding points for Educational Excellence. At Risk developments with Choice Neighborhood Funding should automatically receive 3 points for, "Education excellence, regardless of their actual school scores."

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood. There is a very well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by Mayor Ivy Taylor and referred to as the "EastPoint Initiative."

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee.

In order to be designated a CNI, Housing Authority applicants have demonstrated that the targeted community needs assistance in multiple arenas; including housing, education and social services and has developed a community driven "Transformation Plan" that addresses those needs.

VIA is committed to supporting comprehensive neighborhood revitalization efforts and specifically to the Wheatley Choice neighborhood initiative. It is for these reasons that I support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive 3 points.

Sincerely,

Brian Buchanan
Senior Vice President Development
VIA Metropolitan Transit

LTR0460
O:\SPPD\DOC CONTROL\QAP Letter of Support_10142015.doc10142015

(17) San Antonio Housing Authority

818 South Flores Street | San Antonio, Texas 78204 | 210-477-6262 | www.saha.org

October 12, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11st Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the San Antonio Housing Authority, we would like to submit recommendations for modifications to the 2016 Qualified Allocation Plan (QAP). These recommendations are supported by the City of San Antonio, San Antonio Independent School District, City, County, State and Federal elected officials and community partners.

The recommendations are as follows:

§11.9 Competitive HTC Selection Criteria.
(c) Criteria to serve and support Texans most in need.
5)Educational Excellence

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 for Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 Points); or

(B) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school with a Met Standard rating. (3 points); or

(C) Housing Developments that qualify in the At-Risk pool, that have a nationally-recognized education initiative in place, and/or receive funding from a HUD Choice Neighborhood Initiative, would be eligible to receive (3 points) regardless of the school rankings and scores

Justification: The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood. There is a well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by San Antonio Mayor Ivy Taylor and referred to as the "EastPoint Initiative".

Interim President and CEO
David Nisivoccia
Board of Commissioners: Morris A. Stribling, DPM, Chairman | Charles R. Muñoz, Vice-Chair | Karina Cantu
Ramiro Cavazos | Lisa Rodriguez

Equal Housing Opportunity | *Equal Opportunity Employer*

818 South Flores Street | San Antonio, Texas 78204 | 210-477-6262 | www.saha.org

Eastpoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization initiative (NRI); a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee.

In order to be designated a Choice Neighborhood, Housing Authority applicants must demonstrate that the targeted community needs assistance in multiple arenas, including housing, education and social services and develop a community driven "Transformation Plan" that addresses those needs.

The EastPoint Initiative has made great strides in improving the education, housing, neighborhood and social services in the Wheatley community. Due to the layering of these three federal grants, the San Antonio Independent School District (SAISD) has been able to achieve incremental progress which has put the district in a position to set aggressive goals that will result in a high-quality education for every SAISD student.

Historically in San Antonio, the low-income public housing communities were developed in the inner city which suffered from a lack of investment for many years due to sprawl. Unfortunately, SAISD, which was once considered the largest and strongest school district in the city suffered from a tremendous loss of its tax base resulting in a discontinuation of programs and the inability to compete with the more affluent districts and charter schools.

The EastPoint Initiative has provided the focused investment needed to rebuild SAISD. The district is now ready to heighten its expectations. Over the next five years, these high expectations will drive every action, as they focus on meeting rigorous self-imposed standards that exceed those set by outside agencies.

Any project with this type of commitment, federal investment and focus should have the opportunity to compete in the 9% tax credit round. It is for these reasons that we support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive three points.

Sincerely,

David Nisivoccia
Interim President and CEO

Creating Dynamic Communities Where People Thrive

Interim President and CEO
David Nisivoccia
Board of Commissioners: Morris A. Stribling, DPM, Chairman | Charles R. Muñoz, Vice-Chair | Karina Cantu
Ramiro Cavazos | Lisa Rodriguez

Equal Housing Opportunity | *Equal Opportunity Employer*

(18) Tommy Calvert, Bexar County Commissioner

TOMMY CALVERT
BEXAR COUNTY COMMISSIONER, PCT. 4

October 9, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2016 Qualified Action Plan (QAP)

Dear Mr. Irvine:

I am writing to request changes to the QAP regarding points for Educational Excellence. At Risk developments with Choice Neighborhood Funding should automatically receive 3 points for Education excellence because the district has over $30 million in Eastside Promise Zone Funds, which has led to significant academic success for students.

The designated Promise Zone has been in receipt of the following:

- Promise Neighborhood - $25 million to provide community and academic services for six (6) school within the promise zone
- SAHA - $25 million to assist in the revitalization of the Wheatley Courts and some surrounding neighborhoods
- Community School - $2.5 million to provide direct services to the promise zone community, as prescribed by the community
- School Climate - $2.3 million to provide direct services to improve school safety and student behavior

The third and final phase of the redevelopment of the former Wheatley Courts public housing site is located in San Antonio's eastside neighborhood. There is a very well-coordinated revitalization effort with multiple initiatives underway in this area. Collectively, these initiatives are coordinated by the EastPoint Coordinating Council, chaired by Mayor Ivy Taylor and referred to as the "EastPoint Initiative."

EastPoint is the only community in the United States to receive awards for three separate Federal Programs under the White House Neighborhood Revitalization Initiative (NRI): —a HUD Choice Neighborhood Initiative (CNI), a Department of Education Promise Neighborhood, and a Department of Justice Byrne grantee.

PAUL ELIZONDO TOWER • 101 W. NUEVA, SUITE 1029 • SAN ANTONIO, TX 78205 • (P) 210-335-2614 • (F) 210-335-2926

In order to be designated a CNI, Housing Authority applicants have demonstrated that the targeted community needs assistance in multiple arenas, including housing, education and social services and has developed a community driven "Transformation Plan" that addresses those needs.

Bexar County is a committed partner to the transformation of this community for the betterment of its residents. The County has committed to creating a BiblioTech at the Wheatley site in order to provide residents the opportunity to access technology and its applications for the purposes of enhancing education and literacy, promoting reading as recreation and equipping residents of our community with necessary tools to thrive as citizens in the 21st century.

EastPoint is dedicated to improving the quality of life and education for our children and we are gaining ground. It would be extremely unfortunate for our families and this community if the final phase of the revitalization of Wheatley Courts could not score competitively despite all the progress made thus far and our plans for the near future.

It is for these reasons that we support a revision to TDHCA's draft 2016 QAP regarding points for Educational Excellence. Applications for housing developments which qualify in the At-Risk pool that have a nationally-recognized educational initiative in place, and/or receive funding from CNI, should receive 3 points.

Sincerely,

Tommy Calvert
Bexar County Commissioner, Precinct 4

(19) R.L. “Bobby” Bowling IV

TROPICANA BUILDING II, LLC
4655 COHEN AVE., EL PASO, TX 79924
(915) 821-3550

October 14, 2015

Kathryn Saar and Tom Gouris
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2016 QAP AND PROPOSED 2016 UNDERWRITNG RULES

Dear Kathryn and Tom,

We offer the following comment on the published 2016 Draft QAP:

1. **Tenant Populations with Special Housing Needs—11.9(b)(2):**

We support a methodology whereby tax credit developers with experience and a track record of excellence in compliance is rewarded. The 2015 QAP offers a *PENALTY* for developers with a bad track record, however, the action of an excellent performer is treated the same as a developer that has *ABSOLUTELY NO TRACK RECORD* of performance at all in the tax credit industry. This TDHCA policy of ignoring good performance runs completely contradictory to the private sector, as an excellent record of performance is the most important factor private lenders and investors consider in evaluating a proposed development. It is time TDHCA properly take into account this crucial evaluation factor and use points to incentivize good behavior. However, we believe the current proposal in the draft QAP still does not properly address the problem, as the proposed point category again only penalizes bad behavior and puts experienced developers with excellent track records in the same boat as developer with no record of performance whatsoever in the complex world of tax credit development. We propose the following language change to this point item:

Previous Participation Compliance History (up to 2 points):

(i) *The portfolio of the Applicant has a compliance history of a category 1 as determined in accordance with 10TAC 1.301, related to Previous Participation (2 points), or*

(ii) *The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10TAC 1.301, related to Previous Participation (1 point)*

The definition of the term "Applicant" in the rules allows for a partnership with an experienced developer for a developer without a track record who seeks to receive the point item. This is common practice in the private sector world—if an entity has *NO EXPERIENCE* in apartment development, a private sector bank or investor would look long and hard before approving a proposal from that entity (probably to a much greater extent than 1 or 2 points in 100-point evaluation matrix) and would likely suggest some type of joint venture or partnership with an entity that not only has experience, but a good track record. The point item as we propose it brings TDHCA evaluation in line with the private sector world of finance, which has become extremely difficult to navigate through since the 2008 financial crisis.

2. **Criteria to serve and support Texans most in need—11.9(c)(7)**

We understand and support the Department's efforts to place 811 units in existing portfolios due to time concerns with placed-in-service deadlines and other risks of relying primarily on proposed developments to place 811 units. We support language giving a minimal 1 point incentive to developers willing and able to place 811 tenants in qualifying existing units. We also support other incentives, such as increasing developer fees to 20% or shortening extended use periods by 5 years as proposed by TAAHP to accomplish this Department goal as well.

We offer the following comments regarding the published 2016 Draft of Subchapter C—Underwriting and Loan Policy:

1. **Designation as Rural or Urban—10.204(5)(B):**

We support this proposed language. It is well thought-out and in accordance with statute. We appreciate staff's research into this item and its invitation for feedback during the 2015 roundtable process.

We offer the following comments regarding the published 2016 Draft of Subchapter D—Underwriting and Loan Policy:

1. **<u>Market Rents—10.302(d)(1)(A)(i):</u>**

We understand the Department's concern with trying to underwrite market rents in low-income developments, as the "stigma" associated with low-income units can affect the amount of rent charged on market units in the same development. However, our private sector underwriters are currently using a 10% increase over 60% AMFI rents in developments we have recently been awarded. We feel that this is a reasonable assumption, and we have been able to achieve those rents thus far in our 2 mixed-income awards from 2013 that have recently been placed in service (North Desert Palms and Verde Palms). Granted, each of those deals have over 34% market units, but in the El Paso market, where we work exclusively, the low-income units do not carry the same "stigma" as is possibly seen in other markets. We propose that the Department look to the private sector lender and syndicator community for guidance in this area for each market, as markets in Texas can vary greatly due to differences in what is going on with each local economy. The Department has wide latitude to accept or reject market rents as proposed in applications as per the current rules, hence, we oppose any rule change to this category.

2. **<u>Developer Fee—10.302(e)(7)(A):</u>**

We understand, through various roundtables held by Department staff, that this rule change is precipitated by the notion that Public Housing Authority ("PHA") Rental Assistance Demonstration ("RAD") projects are at a much greater risk of obtaining funding, due to the uncertainty of the financing. In the same line of reasoning, Developments with higher debt are also of a much greater risk to the Developer. Further, a rule that changes the playing field to benefit <u>ONLY PHAs</u> is unfair to private sector developers. Hence, we propose the following rule change to bring riskier, high-debt deals into the same preferred treatment as PHA/RAD deals:

> *For Developments with at least $25,000 per Unit in conventional debt that will not come from an Affiliate of the Developer or Applicant, nor from a Related Party of the Developer or Applicant, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.*

3. **<u>Developer Fee—10.302(e)(7)(F):</u>**

We understand the Department's concern regarding "rewarding" a developer who greatly underestimated costs at the time of application. However, in the development world, cost increases on items beyond a developers control are commonplace. Things such as impact fees and permit fees are constantly

inflated well-beyond the cost of inflation by local governments and while some of us go to great lengths to fight these fees, it is still well beyond our control. Likewise the costs of goods and services can be greatly influenced by things such as construction in China or OPEC actions regarding the world oil market as recent history has shown us. **We propose a reasonable increase in developer fee of up to 15%** if it can be proven at cost certification that such a cost increase was justified and beyond the Developer's control**Developer Fee—10.302(**

We offer the following comments regarding the published 2016 Draft of Subchapter E—Post Award and Asset Management Requirements:

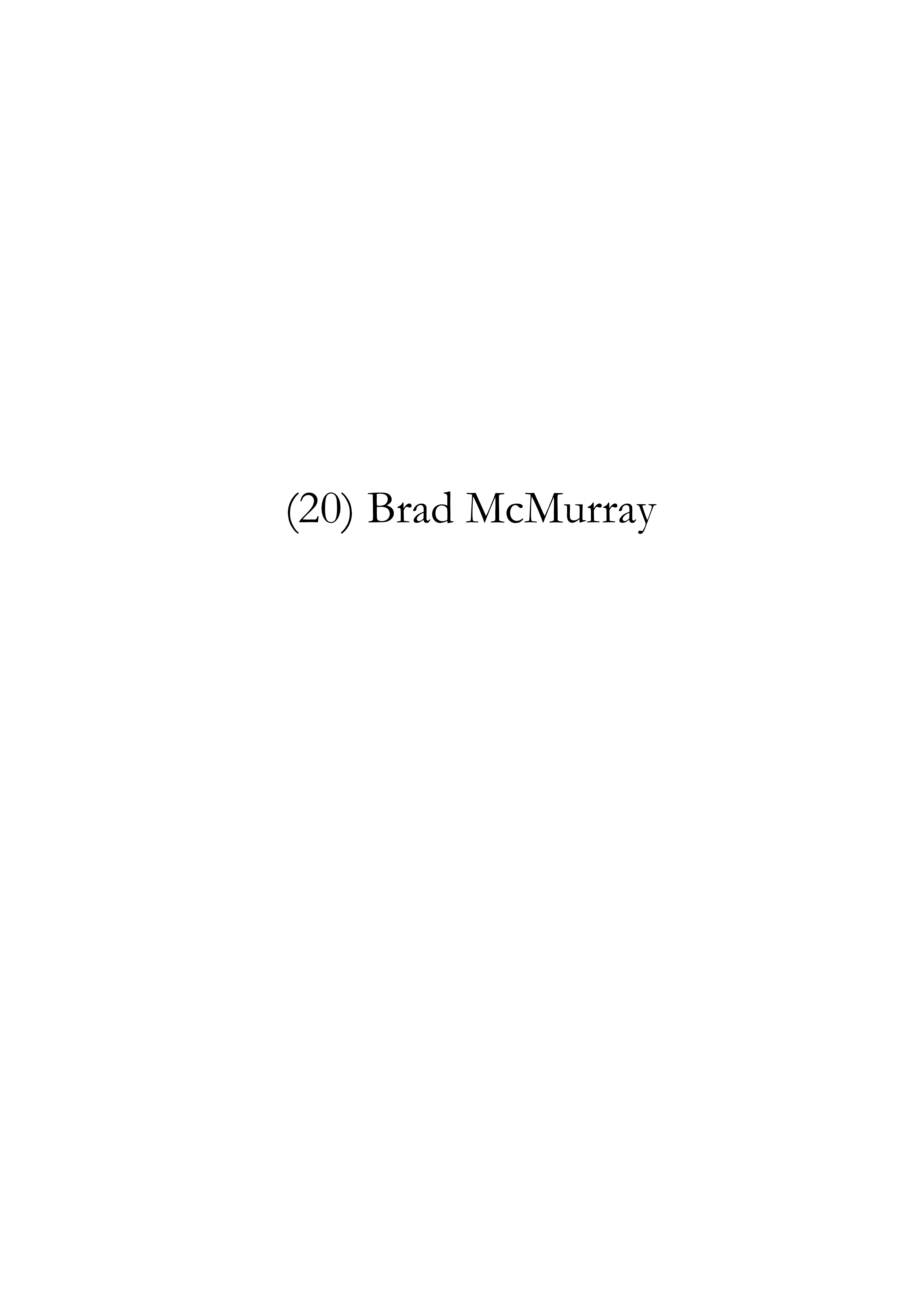
1. **Cost certification—10.402(j):**

We do not understand the reasoning behind changing the requirement of a 15-year pro-forma to a 30-year pro-forma and **we strongly oppose this change.** There is no reasoning given in the Department's presentation in the Board book as with other changes in this section, nor any discussion of this proposed major change during any of the 2015 roundtable discussions. Thus, we hope that the insertion of 30 years is possibly a typo. Our company had a long debate before the TDHCA Board over this issue back in 2006 on our Mission Palms development, at which time the Board decided unanimously that a 30-year pro-forma was not reasonable to use for a variety of reasons (i.e., non-HUD financing typically has either a 15 or 18 year term, so the debt must be refinanced at that time anyway on the vast majority of 9% tax credit deals, so the debt structure will change at that time anyway). In a low-income, low rent area like El Paso and the rest of the Texas border, pro-forma rent projections beyond year 15 often create a situation where operating expenses have increased to the point of a DCR of below 1.15 and creates an unfair situation for border developments—a concern that if realized, would be addressed by the private sector lender and developer during a year 15 or year 18 refinancing. However, if the Department wishes to impose this new standard on TDHCA-financed or HUD financed developments ONLY then we are not opposed.

This concludes our comments for the 2016 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV
President



(20) Brad McMurray

From:	McMurray, Bradford
To:	Teresa.Morales tdhca.state.tx.us
Subject:	2016 Draft Qualified Allocation Plan Comments
Date:	Wednesday, October 14, 2015 7:11:39 PM

[Please confirm receipt of this email to ensure its delivery]

Ms. Morales,

I would like to provide the following comments relating to the 2016 Draft Qualified Allocation Plan as published in the Texas Register. My comments are composed of the revisions and their justification as detailed below:

§ 11.9(c)(4)(B)(i) – Opportunity Index (Rural)

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) Except for an Elderly Limitation Development, the Development Site is located within the attendance zone (or in the case of a choice district the closest) of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B) (For Developments in Region 11, the middle school or high school must achieve an index 1 score of at least 70 to be eligible for these points); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);

Justification – As proposed, the draft language for §11.9(c)(4)(B)(i) appears to require that a middle school or high school in Region 11 must achieve a score of at least 77 on Index 1 to qualify for points; however, this exceeds the index 1 score required in Region 11 for Educational Excellence points in §11.9(c)(5)(A). For consistency, as well as the justification for allowing middle schools and high schools in Region 11 to score 70 on index 1 and qualify

for Educational Excellence points in the first place, the verbiage should be revised as outlined above.

§11.9(c)(6)(F) - Underserved Area

(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce or relocated to the area with an existing workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or

Justification – Because a new business will have completed its initial hiring process prior to the completion of the tax credit development planned in a 2016 application, there is no way for the ultimate residents of the development to be employed at the business. Therefore the intended benefit of the new business is the increased economic activity in the area. The same increased economic activity will result from an existing business relocating to the area. In fact, because of its longer sustained existence, a business relocating to an area has a higher probability of sustained economic benefit because it has a higher probability of continued existence over that of a new business. (Forbes Article - Five reasons 8 Out of 10 Businesses Fail by Eric Wagner September 12, 2013 – "According to Bloomberg, 8 out of 10 entrepreneurs who start businesses fail within the first 18 months.")

Thank you for the opportunity to provide comments and their consideration.

Sincerely,

Brad McMurray

Development Director

8610 North New Braunfels, Suite 500

San Antonio, TX 78217

Office: (210) 821-4344

Mobile: (210) 774-0703

Email: bradfordmc@hcscorp..org

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(21) Structure Development

October 14, 2015

Ms. Marni Holloway
Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701

RE: 2016 QAP and Multifamily Rules Public Comment

Dear Ms. Holloway and Ms. Morales:

As a housing and community development professional on behalf of Structure Development, I would like to provide the following public comment on the proposed Multifamily Rules and 2016 QAP in numerical order.

MULTI FAMILY RULES

Subchapter B - Site and Development Requirements and Restrictions
Mandatory Community Assets §10.101 (a)(2)

Schools should count as an asset for Elderly Limitation Developments as well as for family developments, for all the reasons cited below in the QAP comments. Suggested language:

(J) public schools ~~(only eligible for Developments that are not Elderly Limitation Developments)~~

Undesirable Neighborhood Characteristics §10.101 (a)(4)(B)(ii)
Please consider adding an alternative to reporting crime data. Suggested language below.

The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. or other local-data source such as precinct reports.

Mandatory Development Amenities §10.101(b)(4)
Please consider allowing Packaged Terminal Air Conditioning (PTAC) units in At-Risk and Rehabilitation deals. Many older apartments have low ceilings or are made of concrete block and central air conditioning is not a cost effective solution. High efficiency PTAC units are adequate for small units such as efficiencies and one bedroom units found in many preservation projects. Permitting PTAC units

saves valuable resources for other more measurable and meaningful improvements. Recommended language is below.

All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation).

Subchapter C - Application Submission Requirements
Non Profit Ownership § 10.204(14)

Please remove language requiring a letter from an attorney verifying tax exemption. This will be costly and time consuming to obtain. Many attorneys will not want to verify something that is out of their control (because only Appraisal Districts can officially grant the exemption). Current regulations allow an applicant to provide up tax exemption after award. Please continue this practice.

QUALIFIED ALLOCATION PLAN

Tie Breaker §11.7

When utilizing the poverty rate for a tie breaker, we request that TDHCA utilize the full and exact real number, as provided by the American Community Survey, without rounding. TDHCA's Site Demographic report uses one decimal place rather than the full number. Recommended language for this item is as follows:

(2) Applications proposed to be located in a Census Tract with the calculated lowest poverty rate, as published by the American Community Survey, as compared to another Application with the same score.

Opportunity Index §11.9(c)(4)

We are in support of the changes to Section 11.9(c)(4) with the exception of substituting proximity to senior services for schools in rural regions for Elderly projects. Public Schools are a key community asset in rural Texas and worthy of the 3 points regardless of the population. Education Secretary Arne Duncan agrees defining our schools as community centers that serve the neighborhood 24/7. They provide volunteer opportunity for seniors. Schools have public open space for recreation, fitness, and social interaction. They are places to gather, hold community meetings, and even vote. "Services Specific to a Senior Population" is vague. A person 55 years or older seeks many of the same services as a general

population resident and benefits from proximity to a public school. We recommend keeping the language from the 2015 QAP as written below.

~~Except for an Elderly Limitation Development,~~ The Development Site is located within the attendance zone and within 1.5 linear miles of an elementary, middle, or high school with a Met Standard rating ... (3 points);

~~(B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points.~~

Underserved Area §11.9(c)(6)

We support awarding a census tract that has not received an allocation serving the same Target Population within 10 years 1 point. Please clarify what milestone will be used to measure the time. We recommend the "Year" column on the Property Inventory tab of the Site Demographics spreadsheet provided by the Department. Please note that the "Year" date is the year following the "Board Approval" date in a few instances.

We also support incentivizing areas with commercial growth. However, as written, it is difficult if not impossible to verify a "new business" with a "new facility" with at least 50 persons above the median income. What is new: new to city, new to state, incorporation date? Does an expansion count as a new facility, what about a new building(s), or an addition? Finally, there is no way to verify salary data. The on the map census tool (url: http://onthemap.ces.census.gov/) is an objective and quantifiable method for measuring jobs within an exact radius of a site. We recommend using a 10:1 ratio for the number of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units. This metric will aid in housing Texans with convenient access to jobs. If the *on the map* census tool is not utilized, I request that this item be removed. As written, it is likely to be abused. Recommended language is as follows:

(F) A site with a 10:1 or higher ratio of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units, as evidenced by the U.S. Census Bureau's on the map tool.

Positive and aggressive population growth is also another objective criteria for awarding an underserved point. However data is not available at the census tract level. Figures are only available at a Place level. The only way to measure a 10 year span is to go back from 2010 to 2000. This time frame is not relevant and outdated by 2016. The newest data sources that come closest to a 10 year spread is the latest

American Community Survey data (2013) compared to 2010 American Community Survey. Numbers from 2003 are not available. Recommended language for this item is as follows:

(G) A ~~Census Tract~~ Place, or if outside the boundaries of a Place, a county which has experienced growth increases in excess of 120% of the ~~county~~ Place population growth over the past 3~~10~~ ~~years provided the census tract does not comprise more than 50% of the county~~ as evidenced by American Community Survey 2010 to 2013 data.

Tenant Populations with Special Housing Needs §11.9(c)(7)
As written, rural developers who do not have any urban units are disadvantaged by one point. The following language change is suggested:

A. Applications in Urban Regions may qualify for three (3) points . .

Aging in Place §11.9(c)(8)

We support designing units for individuals to age in place gracefully and with dignity. Based on our experience requiring 50% of units to be Adaptable reasonably accommodates this policy. Recommended language is as follows:

(A) Fifty (50) percent of the ~~All~~ Units are designed to be fully ~~accessible~~ adaptable (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities".

Concerted Revitalization Plan §11.9(d)(7)

We agree that "the requirements for concerted revitalization in a Rural Area are distinct and separate from the requirements related to concerted revitalization in an Urban Area." However, we do not believe that Rural Areas should yield a lower scoring potential than Urban Areas under this category. Currently Rural Areas are only eligible for 4 points under this category while Urban Areas are eligible for 6 points. We are unclear what policy objective, if any, this scoring disparity fulfills, particularly considering the ICP lawsuit focused on Urban Areas. The scoring should be adjusted (without increasing the requirements) so that Rural Areas are also eligible to receive the same 6 points as an urban concerted revitalization plan under this category.

Cost of Development per Square Foot §11.9(e)(2)

Sections 11.9(e)(2)(A)(iv) and 11.9(e)(2)(E)(ii) require updating to correspond correctly with the proposed scoring point changes to the High Opportunity category.

Moreover, all of the costs per square foot in section 11.9(2)(2) should be increased by at least $10, and preferably by $12. Since 2013, construction costs have increased 1% per month. This means that in one year, costs increased by 12.68%. Our firm has documentation of such increases in dated bids, if you would like more evidence for this item.

Historic Preservation §11.9(e)(6)

The environmental, economic, and social benefits of the proposal historic amendments are numerous. We support the changes as written.

Third Party Request for Administrative Deficiency §11.10

We support the proposed language in Section 11.10 to change what was formerly called the "Challenge" Process. In addition to and in order to support this proposed change, we would like to suggest that the Department post the Application deficiencies and Applicant responses to the Department website throughout the review period. Doing this will not only help alleviate the administrative burden that requests for this information place on the Department, it will also increase the transparency of the review process.

Thank you for considering this input on the 2016 QAP and Multifamily Rules. Feel free to contact me if you have any questions at 512.473.2527.

Sincerely,

Sallie Burchett, AICP

Teresa Morales

From: Sallie Burchett [sallie@structuretexas.com]
Sent: Wednesday, October 14, 2015 7:49 PM
To: Marni.Holloway@tdhca.state.tx.us; Teresa Morales
Cc: Sarah Andre
Subject: Re: 2016 Rules and QAP Public Input

As a follow up to the "senior services" definition, I found a great resource guide of strategic recommendations to help craft appropriate aging-supporting plans and programs: Planning Aging-Supportive Communities. Perhaps we can study the report and develop sound recommendations for the 2017 policies.

America is aging fast.

In 2010, 40.3 million people in the United States were age 65 or older, 12 times the number in 1900. The fastest-growing group of older adults is 85-plus, and the trend is likely to continue through 2050 and beyond.

How can communities rise to the challenge? *Planning Aging-Supportive Communities* is a guide to help planners and public officials meet the needs of older residents. Safe and affordable housing is one of the most basic needs. So is the ability to get around town, whether driving, walking, cycling, or taking transit. Public spaces, services, and health programs all must be addressed.

In clear, concrete terms, this new report shows how to use the resources already in place, and what features to add, to create communities that support full, fulfilling — and long — lives.

Sallie Burchett, AICP, LEED Green Associate

On Wed, Oct 14, 2015 at 5:52 PM, Sallie Burchett <sallie@structuretexas.com> wrote:
Dear Ms. Holloway and Ms. Morales.

Please see the attached letter detailing our input on the proposed 2016 Rules and QAP requirements. Feel free to contact me if you have any questions. Thank you for considering the requests.

Sincerely,
Sallie Burchett, AICP, LEED Green Associate

(22) Cynthia Bast, Lock Lord

600 Congress, Suite 2200
Austin, TX 78701
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cbast@lockelord.com

M E M O R A N D U M

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 15, 2015

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 11, QUALIFIED ALLOCATION PLAN**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 11, Texas Administrative Code ("**TAC**"), Qualified Allocation Plan.

Section 11.2

Issue: With regard to the calendar dates, please note that, with regard to the 10% Test, Section 10.402(g) states that the 10% Test delivery date is "no later than July 1", while Section 11.2 indicates July 3.

Recommended Change:

These two provisions of the Rules need to be made consistent for clarity.

Section 11.4(c)

Issue: TDHCA should conform the QAP to federal law with regard to the 130% boost in eligible basis. Specifically, Sections 42(d)(5)(B)(ii) and (iii) of the Internal Revenue Code (the "**Code**") are very clear about the eligibility for boost in qualified census tracts and difficult development areas. TDHCA does not need to modify or expound upon this federal law; it should simply follow it. Thus, rules as to the boost in qualified census tracts and difficult development areas are not required. To the extent TDHCA believes the boost is not required for financial feasibility of a particular Development, the agency already has rules to accommodate a decision, on a project-by-project basis, as to how much boost should be given. TDHCA <u>does</u> need to implement rules under Section 42(d)(5)(B)(v) of the Code, which gives TDHCA the discretion to provide a boost in certain circumstances. This is the only area of the 130% boost in eligible basis that should require rule-making.

Recommended Change:

For consistency with federal law, remove subsections (1) and (2) of Section 11.4(c) and retain subsection (3).

Section 11.9(d)(2)

Comment: Would it be helpful to identify whether a Development located in an ETJ should look to the city or county for funding?

Section 11.9(d)(7)(a)(i)

Comment: I believe this opening paragraph is effective at setting TDHCA's expectations as to the characteristics of a revitalization area.

Section 11.9(d)(7)(a)(i)(III)

Comment: I am struggling to understand what the following sentence means:

"In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to . . . . "

What does it mean to be "augmented with targeted efforts"? Does this mean that the city or county has programs/activities in progress that can be documented but are not necessarily described in the plan document?

Section 11.9(d)(7)(a)(ii)(I)

Comment: The word "outline" needs to be "outlined".

Section 11.9(f)

Comment: The opening sentence states:

"Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection . . . "

What about paragraph (2) of this subsection? Paragraph (2) also identifies violations that should be considered, but as written, I do not believe the Section specifically allows a point deduction for violations described in paragraph (2).

Thank you for your consideration.

(23) New Hope Housing

October 14, 2015

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Teresa:

I am writing to offer additional comment on the 2016 draft Uniform Multifamily Rules and Qualified Allocation Plan. As a respected and leading developer of Supportive Housing, we believe the following changes would better serve the very low income and most vulnerable populations in Texas, and we hope you will make the following revisions.

Multifamily Rules - Subchapter B – Section 10.101(a)(4)(B)(ii)
Undesirable Neighborhood Characteristics – www.neighborhoodscout.com

Once again, please adjust the required use of www.neighborhoodscout.com. This costly $40/month subscription service, which in 2014 the Department thoroughly vetted and found to have questionable data sources, is simply an ineffective tool by which to measure the quality of a neighborhood. As other developers and market analysts mentioned at the September 11, 2015 Board Meeting, census tracts can border one another, and yet be worlds apart in terms of opportunity and crime. Houston has many perfect examples: vibrant Downtown Houston borders multiple high crime areas. Infamously high crime areas in southwest Houston border the affluent Meyerland area.

In addition, some of these so-called "blighted" tracts near downtown Houston have tear-down homes on the market for $250,000, with renovated single family houses selling well above $500,000. Millennials and boomers alike are gravitating to urban cores, where accessibility to employment, restaurants, and recreation is a true quality of life enhancement. This creates a beautifully diverse mix in the community, which helps to lift up areas that have historically struggled with high crime and blight.

In addition, our own research of locally published crime data cannot replicate the disproportionate scores for violent crimes per 1,000 residents listed on neighborhoodscout.com. Our in-house research involved defined census tracts for several areas of the city that score poorly on neighborhoodscout.com. When we pulled the easily available Houston Police Department Beat Reports, which detail each crime by address and date, we found that the number of actual violent crimes in these areas was far below the standard of 18 per 1,000.

- For example, in Houston's vibrant and rapidly gentrifying East End (where you would be lucky to find a new townhome for less than $350,000), the reported number of violent crimes per 1,000 as detailed by neighborhoodscout.com *was greater than 5 times (5x) the actual violent crimes reported on the beat reports for the exact same tracts*. This deeply concerns us, and

hopefully you too. We would be happy to share with you additional specifics about these findings, upon request.

In summary, neighborhoodscout.com uses a set of metrics that are simply impossible to replicate using publicly available data. And many projects that have unsubstantiated high crime scores on this website would be forced to seek Board review and approval, creating significant additional workload and paperwork for Department staff, the Board, and the developer. This can be easily avoided by providing an alternative method to measure the crime statistics of an area. New Hope Housing proposes the following language:

> *(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com.*

Multifamily Rules - Subchapter B – Section 10.101(a)(4)(B)(iv)
Undesirable Neighborhood Characteristics – Met Standard Schools

Once again, please remove from Undesirable Neighborhood Characteristics that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. Houston has open enrollment charter schools, irrespective of the neighborhood where residents live. In addition, creating this additional barrier ensures that no new quality affordable housing is constructed in already gentrifying urban areas. Furthermore, this rule does not take into account single room occupancy (SRO) developments that only lease to adults, who have no children with need or use for higher performing schools. Rightfully, Elderly Limitation developments have achieved exemption, and so too should Supportive Housing. Please add the following language to the last sentence of the rule:

> *"Development Sites subject to an Elderly Limitation or Supportive Housing are considered exempt and do not have to disclose the presence of this characteristic"*

Qualified Allocation Plan Section 11.9(c)(8)
Competitive HTC Selection Criteria – Aging in Place

Please provide an opportunity for Supportive Housing, in line with the alternative the draft reflects for "Aging in Place." New Hope currently has nearly 1,000 adult residents, and disadvantaging supportive SRO housing simply does not make sense. There are already many barriers to filling this housing void, so requiring high performing schools to compete with traditional family deals just creates one more hurdle, when the fact is no school aged children live in SRO housing. This can be accomplished simply by adding the following language:

> *"An application for an Elderly Development, or a Supportive Housing SRO Development, may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)."*

Qualified Allocation Plan Section 11.9(e)(2)(B)
Cost of Development per Square Foot

Recent years have shown dramatic increases in construction costs, particularly in the major cities. As a direct result of this activity, overall costs are escalating. Houston has seen a dramatic 20% increase in multifamily construction costs over the past two years and while forecasters are projecting a leveling off of costs, they do not anticipate any significant decreases. As a result of these increases, Supportive Housing is at an even greater disadvantage. Supportive Housing includes larger than average community spaces, increased numbers of social service offices, and resident-centered amenities – all designed to help keep the vulnerable individuals and families stably housed. In spite of these sustained increases, the TDHCA has not made adjustments to the cost per square foot rule since 2013. It is time for an increase, and we respectfully propose the following language:

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $90 per square foot;
(ii) The Building Cost per square foot is less than $95 per square foot, and the Development meets the definition of a high cost development;
(iii) The Building Cost per square foot is less than $125 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development;
(iv) The Hard Cost per square foot is less than $110 per square foot; or
(v) The Hard Cost per square foot is less than $120 per square foot, and the Development meets the definition of high cost development.
(vi) The Hard Cost per square foot is less than $150 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development.

In addition to the detailed amendments above, all concerned with New Hope express genuine appreciation for reinstatement of the 50 square feet of common area space per unit for Supportive Housing. This makes a significant impact on project feasibility and we are thankful the Department responded to the Supportive Housing community's needs in this regard.

I hope you know this letter brings with it my utmost respect and appreciation for the work you do, and for the opportunity to offer comment. Thank you for your willingness to dialogue with the developer community. The changes I am requesting would increase the feasibility of direly needed Supportive Housing across the State of Texas. Should you wish to speak with me personally, I welcome hearing from you at any time via my cell at (713) 628-9113.

Sincerely,

Joy Horak-Brown
President & CEO

CC: Tim Irvine, Tom Gouris, Marni Holloway

(24) Mary Henderson

From: MARY HENDERSON
To: teresa.morales tdhca.state.tx.us
Subject: Public Comments for 2016 QAP and MF Rules
Date: Thursday, October 15, 2015 10:21:18 AM

Teresa,

My public comments on the Draft QAP and Multifamily Rules for 2016 are focused on the radius limitation for important services of full service grocery and pharmacy for the proposed scoring of 1 point each, as well as my interest in seeing churches retained as a Community Asset (which is recommended in the TAAHP membership letter of recommendations).

Otherwise, I am in agreement with the changes/modifications proposed by the TAAHP membership.

Specifically, I am requesting a change in distance to 1.5 miles for Urban Developments to score 1 point each for proximity to 1) a full service grocery and 1) a pharmacy. I feel that if the allowable distance is being changed for Rural Developments from a 2 to 3 mile radius, then a commensurate change (50% extension of the radius) should be applied to Urban Developments, because of the more intense land uses, commercial zoning which typically requires rezoning and higher land costs that are encountered in Urban areas in proximity to these services. These services are most often located in heavily retail areas which often are almost fully built out, making it extremely difficult to find affordable tracts of suitably large land upon which to construct affordable multifamily developments.

I propose the following language be adopted for the 2016 QAP:

Qualified Allocation Plan

Section 11.9 (c)(9) Competitive HTC Selection Criteria/Proximity to Important Services

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one-and-a-half (1.5) mile radius for Urban Developments and a three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.

(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

I have been seeing an associated negative impact from attempting to locate Urban Developments in a tight one-mile radius of important services. That is the "domino" effect that also impacts one or two highly rated schools that lie within this tighter radius. The net effect is growing pushback from families and school districts. They are fearful that multiple projects in the same tight radius will have a negative impact on teacher/student ratios, increase the percentage of economically disadvantaged students in these nearby schools and lower test scores. I know of at least one instance this past year when parents and school board members then complained to the State Rep who opposed and ultimately defeated the Urban Development. I am fearful that unless more is done to create better dispersion of Urban Developments (such as extending this radius requirement), that more and more communities will be opposing affordable MF development.

Thank you,
Mary

Mary Henderson Associates
Direct: (512) 931-3713
Mobile: (512) 287-9612

(25) Vecino Group

From:	Heather Bradley-Geary
To:	Teresa Morales
Cc:	Rick Manzardo; Karl Neiderer
Subject:	2016 Qualified Allocation Plan (Public Comment)
Date:	Thursday, October 15, 2015 11:19:52 AM
Attachments:	image001.png

Mr. Morales: Please accept the following as public comment regarding the 2016 Qualified Allocation Plan. If you need further information or have any questions regarding the following public comments, please contact me at Heather@VecinoGroup.com or (913) 905-9645. Thank you for the opportunity to make comment.

1. If possible, a red-lined version of the Qualified Allocation Plan (changes from 2015 to 2016) posted on the website would be a great tool.

2. The opportunity area points forces development in suburban neighborhoods that are not really conducive to the target population. The Vecino Group is dedicated to Housing for the Greater Good and ultimately working to end homelessness through collaboration with local non-profits. One of the ways that Vecino Group works towards housing for the greater good is making a community better than when we came. For example, developing an abandoned housing authority building to house persons that are homeless, incorporating the adjacent neighborhood to offer services, and working with the local school districts to provide tutoring. This is just one example of making the community better. When Vecino Group is forced to develop in the more suburban community, we are taking the resources we are able to provide away for our most vulnerable citizens. We urge TDHCA to weigh CRA points just as much as opportunity area points. Further, educational excellence points should not be limited by points under the opportunity index. These two additions/changes will allow supportive housing developers to continue to work in the urban core, continuing our work in collaborating with local communities to revive neighborhoods.

3. The adaptive reuse or acquisition/rehab cost per square foot seems low for scoring purposes. Vecino Group specializes in historic gut-rehabs, allowing us to better neighborhoods. Comment for suggestion: For developers that are doing 100% historic development, costs can exceed 20% of the posted scoring.

Heather Bradley-Geary, MSW

The Vecino Group

(913) 905-9645 (Cell)

THE VECINO GROUP
Housing for the greater good.

(26) Daniel & Beshara, P.C.

Daniel & Beshara, P.C.
3301 Elm Street
Dallas, TX 75226
214 939-9230
danbesh@danielbesharalawfirm.com
fax 214 741-3596 or 214 939-9229

October 15, 2015

email to
beth.klusmann@texasattorneygeneral.gov
nancy.juren@texasattorneygeneral.gov

To: Texas Department of Housing and Community Affairs

From: Daniel & Beshara, P.C. on behalf of the Inclusive Communities Project, Inc.

Re: **Comments on 2016 Draft Qualified Allocation Plan**

We represent the Inclusive Communities Project, Inc. (ICP). This comment on parts of the proposed 2016 QAP is filed on behalf of ICP.

Comment on 2016 Draft Qualified Allocation Plan

ICP objects to the proposed change in the concerted community revitalization plan. ICP objects to the delegation of the subjects of an eligible concerted community revitalization plan to municipalities. The delegation is made without standards for the conditions that must be addressed and without standards for the measurable improvements upon which the points are to be awarded. Draft 2016 QAP § 11.9 (d)(7)(A). The revision will allow municipalities to continue to maintain racial segregation in areas of slum and blight by making improvements that do not address significant elements of the segregation, slum and blight. For example, a plan that calls for new sidewalks in an area of slum and blight will be eligible for points even if the only revitalization work is partial completion of the sidewalk replacements. There is no obligation to address other elements of slum and blight in order to be eligible for the selection criteria points.

ICP objects to the distribution of the scoring point criteria that award a disproportionate number of points for the municipal approval element and the State Representative approval element. These elements will perpetuate racial segregation in the LIHTC program. Even though the elements are statutory points, TDHCA has discretion in defining the terms upon which the points will be awarded. For example, TDHCA could lessen the segregative effect of the elements by conditioning the award of positive and negative points based on whether or not the municipality or State representative provided the developer with a statement of reasons for the opposition and provided the developer with an opportunity to respond to the opposition.

TDHCA has the discretion to disregard these points when appropriate to avoid perpetuating racial segregation.

Michael M Daniel
Laura B. Beshara

(27) Brownstone Affordable Housing

BLOOM APARTMENTS
HISTORIC RENOVATION

Blooms Apartments in Tallulah, LA

- **Description of Property:** First indoor mall ever built in the United States in 1927
- **Rural or Urban**: Rural
- **Construction Type**: Adaptive Reuse
- **Number of Units**: 30 units of LIHTC, general population
- **Cost Certified Total Construction Cost including OH&P**: $4,800,691
- **Cost Certified Total Development Cost**: $6,770,971
- **SF of Building**: 24,448 NRSF, 2,168 SF for clubhouse, 14,234 SF halls and common space
- **Tax Credit Award**: $550,000 in annual LIHTC
- **Additional Funding for Development**: 20% Federal Historic Credit; 25% State Historic Credit
- **Cost certified final construction cost**:
  - o Total Development cost/unit: $225,669.00/unit
  - o Total Construction cost/unit: $160,023.00/unit
  - o Total Construction cost/NRSF: $196.36/NRSF
  - o Total Development cost/NRSF: $276.95/NRSF

AEOLIAN SENIOR APARTMENTS
HISTORIC RENOVATION

Aeolian Senior Apartments in Vicksburg, MS

- **<u>Description of Property</u>**: Abandoned apartment building in downtown Vicksburg that was originally built in 1924.
- **<u>Rural or Urban</u>**: Rural
- **<u>Construction Type</u>**: Rehabilitation
- **<u>Number of Units</u>**: Built 60 units of LIHTC Senior housing
- **<u>Cost Certified Total Construction Cost including OH&P</u>**: $6,402,833
- **<u>Cost Certified Total Development Cost</u>**: $9,169,123
- **<u>SF of Building</u>**: 38,752 NRSF, Community area 4,279 SF, all other common space 22,654 SF
- **<u>Tax Credit Award</u>**: $749,045 in annual LIHTC
- **<u>Additional Funding for Development</u>**: 20% Federal Historic Credit
- **<u>Cost certified final construction cost/SF</u>**:
    - Total Development cost/unit: $152,818.00/unit
    - Total Construction cost/unit: $106,713.00/unit
    - Total Construction cost/NRSF: $165.22/NRSF
    - Total Development cost/NRSF: $236.61/NRSF

CARR CENTRAL APARTMENTS I AND II
HISTORIC RENOVATION

Carr Central Apartments I and II in Vicksburg, MS

- **Description of Property**: Abandoned school in downtown Vicksburg that was originally built in 1924.
- **Rural or Urban**: Rural
- **Construction Type**: Adaptive Reuse and New Construction
- **Number of Units**: Total of 72 LIHTC family units: 36 units within the historic structure and additional 36 new construction units
- **Cost Certified Total Construction Cost including OH&P**: $11,444,515
- **Cost Certified Total Development Cost**: $16,670,096
- **SF of Building**: 78,878 NRSF and 81,968 GSF
- **Tax Credit Award**: $1,499,659 in annual LIHTC
- **Additional Funding for Development**: 20% Federal Historic Credit
- **Cost certified final construction cost/SF**:
  - Total Development cost/unit: $231,529.00/unit
  - Total Construction cost/unit: $158,951.00/unit
  - Total Construction cost/NRSF: $145.00/NRSF (36 Historic/36 NC)
  - Total Development cost/NRSF: $211.00/NRSF

6517 Mapleridge
Houston, TX 77081
T. 713.432.7727
F. 713.432.0120

October 15, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Comments/Recommendations to 2016 Qualified Allocation Plan ("QAP")

Dear Chairman Oxer and Members of the Board:

We respectfully submit the following public comment on the Draft 2016 QAP:

<u>§11.9(c)(7) Tenant Populations with Special Housing Needs</u>

Section 11.9(c)(7)(A) in the 2016 QAP Draft aims to award developers three (3) points if they have existing developments within their portfolios that are eligible for participation in the Section 811 PRA Program. By rule, a development is only eligible for 811 participation if the following five qualifications are met:

1.) must serve the general population;
2.) must have been originally constructed after 1977;
3.) must have units available that are free of other subsidies (project based rental or long term operating assistance);
4.) must be located within one of the seven largest Metropolitan Statistical Areas ("MSA"):
    a. *Austin-Round Rock MSA;*
    b. *Brownsville-Harlingen MSA;*
    c. *Dallas-Fort Worth-Arlington MSA;*
    d. *El Paso MSA;*
    e. *Houston-The Woodlands-Sugar Land MSA;*
    f. *McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA*); and

5.) must *not* be located within the 100 or 500 year floodplain.

We have analyzed the available data and determined that only 43% of TDHCA's inventory is eligible for 811 vouchers *before* accounting for developments located within a floodplain. We were unable to find a reliable source for determining which developments would be excluded because of this factor, but we assume that large sections of the coast would be eliminated. Only 39 counties in the State qualify for the 811 Program.

This creates an unfair scoring advantage for a minority of developers whose portfolios contain a development eligible for 811 participation, and consequently places severe economic disadvantage on nearly all other developers in Texas without 811 PRA Program eligible inventory. For most rural regions in Texas where awards are usually determined on tie-breaker factors, this automatically puts those developers with 811 PRA Program inventory at a huge advantage over those developers without eligible inventory.

While we understand that §11.9(c)(7)(A) is being proposed to get more participation in the 811 PRA Program, we have never seen a proposed rule which benefits only those who were fortunate enough to have developed in certain areas of the State. This proposed rule change would essentially make our applications noncompetitive next year. For developers like us that have built a portfolio of tax credit inventory in either the rural or smaller urban markets, this new section in the QAP has the ability to essentially put us out of business for the 2016 tax credit cycle.

For these reasons, we believe that §11.9(c)(7)(A) should be limited to only a two point scoring item. We further echo TAAHP's comments on this subject as they relate to creating other (non-scoring) incentives to increase 811 PRA participation.

Historic Preservation

The 84th Texas Legislature amended Texas Government Code §2306.6725 to incentivize the allocation of Low Income Housing Tax Credits to Applications that "rehabilitate or perform an adaptive reuse of a certified historic structure, [...], as part of the development." We applaud the changes that TDHCA has made to the Draft 2016 QAP in its effort to administer this incentive. However, we believe that even with the five (5) points now available under §11.9(e)(6) of the QAP, related to Historic Preservation, these transactions cannot be competitive because of the limits placed on Applications under §11.9(e)(2) of the QAP related to Development Cost per Square Foot. Under §11.9(e)(2), adaptive reuse or rehabilitation developments are eligible for up to twelve (12) points, provided that Hard Cost plus Acquisition does not exceed $130 per square foot. We have found this $130/SF cost limitation unachievable when dealing with historic structures. Included below, you will find information (post cost certification) on three of our Historic Preservation deals completed in other states. None of these developments would be competitive in the State of Texas because of the existing cost per square foot limit: Blooms Apartments totaled $196/sf and Aeolian totaled $165/sf. Carr Central

Apartments, the least expensive of the three deals on a cost per square foot basis, consisted of 72 units and came in at $145/sf. With this particular deal, the historic structure being renovated could only accommodate 36 units. In order to make the financials work, an additional 36 units of new construction were added, which fortunately the site could accommodate.

This brings up another issue with the Historic Preservation incentive in the QAP. Under §11.9(e)(6), Applications are only eligible for Historic Preservation points if 75% of the units are located within the envelope of the historic structure. We appreciate the intent behind requiring a significant number of units within the historic structure; without such a limitation, a small piece of the façade of a historic building could be salvaged to qualify for points on what is essentially a new construction building. However, we believe that 75% is excessive and further compounds the cost per square foot issue outlined above. Many historic structures are small and cannot accommodate enough units to make redevelopment financially feasible, unless new units are added to the site.

In order to make this legislatively mandated incentive for historic preservation impactful, Brownstone recommends the following two revisions to the 2016 QAP.

§11.9(e)(2) Development Cost per Square Foot

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; ~~or~~

(iii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $175 per square foot, that qualify for points under subsection (e)(6) of this section, related to Historic Preservation; or

(~~iii~~iv) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, or $200 per square foot for Applications that qualify for points under subsection (e)(6) of this section, related to Historic Preservation.

§11.9(e)(6) Historic Preservation

(6) Historic Preservation. (§2306.6725(a)(5)) An Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive five (5) points. At least ~~seventy-five~~forty percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a

Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status.

Thank you for consideration of our recommendations.

Respectfully,

Brownstone Affordable Housing, Ltd., a Texas limited partnership

By: Three B Ventures, Inc., its general partner

By:______________________________
Doak Brown, Vice President

(28) Arx Advantage, LLC

Arx Advantage, LLC
Robbye G. Meyer
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October 15, 2015

Texas Department of Housing and Community Affairs
Attention: Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Ms. Morales:

We appreciate the opportunity to provide comment to the Uniform Multifamily Rules, Qualified Allocation Plan and Real Estate Analysis Rules.

§10.101(a)(2) Mandatory Community Assets
We support TAAHP's recommendation for churches/religious institutions to be added back to the list of Mandatory Community Assets.

These organizations provide many services that the tenants we serve need and use. It makes logical sense that these organizations be included as Community Assets.

§10.101(b)(5) Common Amenities, §10.101(b)(6) Unit Requirements, and §10.101(b)(7) Tenant Services
We Support TAAHP's recommendation to request the timeframe for these items to be returned to the Section 42 fifteen (15) year Compliance Period instead of the Extended Use Period as the current language in the draft rules is requiring.

§11.9(b)(2) Sponsor Characteristics
We believe at this point in time, this point category has not been evaluated enough to be appropriately implemented. Developers/Applicants do not know what compliance category will apply to them; therefore, they will not know what score to attach to this criteria.

An alternative recommendation would be to put this as a placeholder for the 2017 QAP and allow the Developers/Applicants to go through the process in the 2016 cycle without the score actually being counted. This will at least give Developers/Applicants a potential look at what will happen in 2017 and this can be better evaluated for 2017.

§11.9(c)(6)(F) & (G) Underserved Area
While we applaud the Department for trying to find more ways to spread out points and accepting suggestions to accomplish this goal, both of these new additions to the underserved area cause concern. The Department needs to state a clear reliable third party source that will be acceptable for obtaining this data. We do not believe a letter

from a city/county official is appropriate and can be subjective and a strong case for challenges/administrative review. For (G) specifically, will this be ACS data, if so, which ACS data source.

§11.9(c)(7)(A) Tenant Populations with Special Housing Needs

We support the Department's efforts to encourage participation and expedite the allocation of the 811 Program Funds; however, we do not support awarding points to applications that are not in eligible areas. This scoring item eliminates many developers in the state that have existing portfolios in non-811 eligible MSA areas, along with new developers to the program and to the state of Texas.

As an alternative, the 811 program can be made as a threshold requirement for 4% tax credit applications submitted to the Department for developments proposed in 811 eligible MSAs. Our recommendation is for 10% of the total units in a qualified development.

§11.9(e)(2) Cost of Development per Square Foot

We support TAAHP's recommendation for this point category.

§10.302(d)(1)(A)(i) Market Rents

Recommend language change: For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI.

10.302(e)(7)(F) Developer Fee

Although we understand what the Department is trying to curtail with these new restrictions, we believe there needs to be more discussion with all stakeholders (developers, investors, lenders, etc.…) before a final determination is made. This change affects the overall deal as a whole and not just the developer pocket book.

HB 3311 Parity of Senior Housing

When reading the actual language in the statute and applying the formula according to the literary language, it appears clear that the statute is directed at the sub-regions. Since the At-Risk set aside does not differentiate between regions and sub-regions or rural and urban, it should be clear that the At-Risk set aside should not be included in the formula for the percentage of senior housing in Texas.

We appreciate the opportunity to participate in the discussion. If we can be of additional assistance, please let us know.

Sincerely,
Robbye G. Meyer

(29) Hettig-Kahn

From: Barry Kahn
To: Marni.Holloway tdhca.state.tx.us; Teresa.Morales tdhca.state.tx.us
Cc: Ryan Hettig
Subject: FW: QAP Comments - Section 11.9 (4)(A) Regarding 15% poverty limit for individuals
Date: Thursday, October 15, 2015 5:44:19 PM

Marni and Teresa,

Just returning from Austin, I would like to expand on the below after my discussion with Marni. The Poverty index was developed on a testing basis years ago. It started at 10%. Then it went to 15% on an experimental basis, with a view to increasing it, and never changed.

The 30% boost is critical to a transaction these days. To be in a changing or gentrifying area which has become high opportunity according to one index but where the data on poverty rate may not have changed (HUD is always several years behind) or be stale should not deter a needed and worthwhile development from occurring.

Thus we are very supportive of the TAAHP position of increasing the rate to 20% and then maybe further modifying in the future. As the new AFFH rule states, there needs to be balance and raising the poverty rate for the areas that need it is a step in the right direction.

Thank you.

From: Ryan Hettig
Sent: Thursday, October 15, 2015 11:02 AM
To: 'Teresa Morales'
Subject: QAP Comments - Section 11.9 (4)(A) Regarding 15% poverty limit for individuals

Hello Teresa,

I wanted to add my comment and agree with TAAHP's position regarding the poverty rate restriction of 15% in Section 11.9 (4) (A) of the QAP

"TAAHP also request that the poverty rate for opportunity index be increased to 20% for all areas outside of Region 11 where the poverty rate should stay at 35%."

"Justification: This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunity" which will promote further de-concentration of awards. These new census tracts are still first and second quartile census tracts and in many cases have highly rated schools and are closer to services and town centers. This change also helps alleviate the issue

that residents living in preservation properties are part of the poverty rate, making their own communities uncompetitive”

I would also like to add that with ever changing neighborhood statistics, many times it takes the reported data several years to catch up with what may actually be happening in a specific area (e.g. – a specific census tract may be experiencing an increase in income levels, but the decrease in poverty rate may take time to catch up). I believe this to be particularly important in areas with a large urban population like Houston and Dallas

Thank You

Ryan Hettig

From: Ryan Hettig
To: Teresa Morales

Subject: QAP Comments - Section 11.9 (4)(A) Regarding 15% poverty limit for individuals
Date: Thursday, October 15, 2015 11:01:55 AM

Hello Teresa,

I wanted to add my comment and agree with TAAHP's position regarding the poverty rate restriction of 15% in Section 11.9 (4) (A) of the QAP

"TAAHP also request that the poverty rate for opportunity index be increased to 20% for all areas outside of Region 11 where the poverty rate should stay at 35%."

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Thank You

Ryan Hettig

(30) Housing Lab by BETCO

October 8, 2015

Mr. Teresa Morales, Tax Credit and Bonds Administrator
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: 2016 Draft Qualified Allocation Plan (QAP) and Uniform Multifamily Rules

Dear Ms. Morales,

We appreciate the opportunity to provide comments to the draft 2016 QAP and Uniform Multifamily Rules. We appreciate all of staff's work on these rules and the various improvements made for the benefit of the program and its practitioners, including the ability to submit applications electronically, the reduction of local funding and equalizing scoring criteria for elderly and general population developments. With respect to certain items that we do not agree with, we offer the following comments for the Department's consideration. Please note that we have notated our changes in red font.

Qualified Allocation Plan (QAP) Comments:

§11.7 Tie Breakers

We would like to recommend a slight language change to the fourth tie break criteria to compare distances between the same target populations. This modification will assist with the on-going de-concentration efforts. We offer the following amended language to the current draft language:

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same target population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear mile will be performed by the closest boundaries.

§11.9(b)(2) Sponsor Characteristics

While we are not necessarily opposed to this new point category added to Sponsor Characteristics, it is unclear how an Applicant is to actually determine their current status. There are times where Department staff review time spills past the 90-day correction period deadline and will require more information from the Applicant/Developer. Will this be an instance that would impact the category status, even if the Applicant/Developer submitted their corrective action response prior to the conclusion of the corrective action period deadline? There are also times where

an Applicant cannot correct the identified issue of non-compliance due to the unavailability of the resident or household member. Again, how will this impact the category status? We would like to request and recommend that Department staff set forth the process in which Applicants can determine their current category status. We further recommend that category status determined current as of the Application submission date of March 1, 2016, be applicable to the application throughout the review and evaluation process.

§11.9(c)(4) Opportunity Index

We would like to request that poverty rate for this scoring criterion is modified from 15% to 20% for both the Urban and Rural Areas. This modification will allow more census tracts in top two quartiles to become available and include communities that want and need the housing, but previously were not competitive. This adjustment will also further promote ongoing de-concentration efforts.

We also agree with other commenters that have advocated for more options for placing developments in areas of high opportunity that include second quartiles. These second quartile areas also offer high incomes; low poverty rates; and access to quality schools and often, these areas are located closer to public transportation and employment opportunities. We also agree with the current QAP language that provides opportunities in second quartiles; however, we do not agree that these second quartile areas should be a point less than first quartile areas with the added requirement of the elementary school having received at least one distinction. If this additional requirement is to be met for second quartile areas, then these areas should have the same point value as the first quartile areas. If this added requirement of the elementary school having at least on distinction was not part of the second quartile draft language, then it would qualify for a point less as the difference between seven (7) and six (6) points was the applicable quartile. We recommend a combination of language of (i) and (ii) under (A). We offer the following amended language to the current draft language:

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 20 percent for Individuals (or 35 percent for Developments in regions 11 and 13), an Applicant may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i)-(iv) of this subparagraph. The Department will base the poverty rate on data from the five (5) year American Community Survey.

(i) *The Development is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable. If the Development Site is located in the top quartile, is in the attendance zone of an elementary school that has a Met Standard rating, and has achieved a 77 or greater on index 1 of the performance index, related to school; or, if the*

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Development is located in the second quartile, is in the attendance zone of an elementary school that has a Met Standard rating, achieved a 77 or greater on index 1, and has earned at least one distinction designation by TEA (7 points).

(ii) *The Development is located in a census tract with income in the second quartile of median household income for the county of MSA as applicable, and the Development Site is located in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (6 points)*

(iii) *The Development is located in a census tract with income in the top quartile of median household income for the county of MSA as applicable (5 points)*

(iv) *The Development is located in a census tract in the top two quartiles of median household income for the county or the MSA, as applicable (3 points)*

(B) For Developments located in the Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on the median income of the area and/or proximity to the essential community assets as reflected in clauses (i)-(vi) of this subparagraph if the Development Site is located within the census tract that has a poverty rate below 20 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

§11.9(c)(7) Tenant Populations with Special Housing Needs

We are unclear as to why the number of points in this point category changed when the path to receive points has not changed from the previous year. In the current draft, an Applicant can receive points by committing the prescribed number of 811 units to their existing units in 811 eligible areas or commit the prescribed number of 811 units in their proposed development. This was the same criterion that was in the 2015 QAP and the same number of points was available to Applicants regardless of point path. This year, there is an extra point given to the Applicants that have existing units for 811 eligible units. Perhaps there are pressing federal deadlines that are in jeopardy of not being met; hence, the extra point incentive. Whether this is the case or there is another reason to get the 811 units placed quickly, creating this unfair playing field is just bad policy all the way around. Therefore, we respectfully request the new paragraph (A) be stricken from the rule in its entirety, the current subpart (B) becomes (A) and current subpart (C) becomes (B).

Further, as an industry, we certainly wish to support the Department's efforts to advance the 811 program and understand that there could be issues such as looming federal deadlines and/or agencies that assist special needs populations needing available units for their clientele as quickly as possible that may have contributed to the push of this incentive, but there are other ways to accomplish this task. One such

option would be to utilize the exact 2015 QAP language for this point category, allowing the same points to be obtained by all Applicants regardless of which path is used for the points – commitment of existing units vs. commitment in proposed development units AND include the 4% Housing Tax Credit Program to this effort by adding a threshold item that requires commitment of prescribed number of 811 units in the proposed development or commitment of prescribed number of 811 units in existing developments. This way, both programs are participating simultaneously to further the Section 811 PRAC Program initiative. A tiered approach should be utilized in the 4% Housing Tax Credit Program based on the number of units in the existing development or proposed development. For example, developments with 100 or less units, must commit 10 Section 811 units; developments with 101-200 units, must commit 20 Section 811 units; developments with 201-300 or more units must commit 30 units Section 811 units. The requirements outlined in clauses (i)-(v) of the current subpart (B) would also be applicable to the 4% Housing Tax Credit Program Section 811 units.

Should this option to include the 4% Housing Tax Credit Program not be possible during the 2016 cycle, we strongly encourage the Department to consider including it in the 2017 4% Housing Tax Credit Program cycle to work with the 9% Housing Tax Credit cycle.

§11.9(c)(9) Proximity to Important Services

We agree with other commenters that a two-mile radius for a full service grocery store and pharmacy for the rural area will be very difficult to achieve, as many rural communities have these amenities ranging from three (3) to five (5) miles out from established neighborhoods and personal vehicles are needed to reach these amenities as there is no public transportation in rural communities. Therefore, we respectfully request the applicable radius for these amenities be expanded to three (3) miles and we offer the following language:

(9) Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one-mile radius (three-mile radius for Developments in a Rural Area) of the services listed below. These do not need to be separate facilities to qualify for the points.

Uniform Multifamily Rules Comments:

Subpart B – Site and Development Requirements and Restrictions

§10.101(a)(2) Mandatory Community Assets

In the 2016 draft rule, religious institutions were removed as a mandatory community asset. We respectfully request that this asset be added to the list of

Mandatory Community Assets, as these institutions play an essential role to the community on both an individual citizen level and overall community level.

Religious institutions, or churches, are a public service to the surrounding communities and provide just about everything. These institutions do not just provide support for the spiritual and emotional needs and health of its membership in the community, but also provide a myriad of supportive services to the community. Such services include day cares, meals on wheels, counseling, food pantries, immigration and free legal clinics, seminars on finances and health, which may include health fairs with free screenings for blood pressure and free flu shots, as well as emergency funds for items such as rent, utilities, medical expenses, or car repairs.

The church is about people, very much like our own industry. Its purpose is the betterment of the community and its citizens. When the church is rooted in its community and its membership is operating as public servants, the church has the ability to impact lives and the community in a very positive manner and should be considered a community asset that benefits low-income residents.

§10.101(a)(4)(B) Undesirable Neighborhood Characteristics

The current draft language found in clause (iv) of this subparagraph should be stricken in its entirety. This new language is very restrictive and would exclude large sections of communities in Urban Areas.

It is unclear as to how the Department will assess this item, if identified as an undesirable neighborhood characteristic, and what actions, documentation and timelines would be acceptable submissions by the Applicant to mitigate schools not having a Met Standard rating.

For example, if TEA and/or the school in question share what their plan of action is for bringing the rating of the school up to Met Standard and it will take five years to accomplish most of the outlined actions in the plan, will this timeframe be acceptable to resolve the issue? Or does the mitigation plan have to resolve all issues by Placed In Service date?

Due to the potential redlining of Urban Areas and the unpredictability of possible remediation, we respectfully request that this language be stricken entirely, and clause (v) becomes clause (iv).

§10.101(a)(5) Common Amenities

We also would like to recommend that language in subparagraph (B) be modified to reflect "Compliance Period" and not "Extended Use Period". With more and more development coming on line every year, monitoring staff will be required to expend

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more resources to not only monitor what is federally required during the compliance period, but the added burden of monitoring these amenities throughout the Extended Use Period as well. This is both unnecessarily restrictive and cumbersome for both Department staff and the Property Owner. We offer the following language:

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period.

We wish to express our appreciation for considering our comments. If you have any questions, please do not hesitate to contact me any time directly at the number or email listed below.

Respectfully,

Lora Myrick

Lora Myrick
Principal

(31) Marque Real Estate Consultants

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October 15, 2015

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: Draft 2016 Qualified Allocation Plan and Multifamily Rule Comments

Dear Mr. Irvine,

Thank you to you and your staff for your continued efforts to dialogue with the stakeholders related to the staff drafts of the 2016 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). Please accept the following comments on behalf of Marque Real Estate Consultants (MREC). Comments 1, 3, 5-8, 10, 13, 15, 16, and 18 mirror comments made by the group TX-CAD and comments 2, 3, 8, 10-17 mirror comments made by TAAHP.

1. **QAP, §11.7(3) Tie Breaker Factors**
   MREC suggests a change to the third tie breaker in order to add clarity to how the tie breakers will be applied across deal types. As written, it is unclear how a tie between multiple applications representing general population and elderly developments would be treated under §11.7(3). Therefore, we suggest that the third tie breaker apply to all developments, not only general population developments. Suggested language:

   (3) ~~For competing Applications for Developments that will serve the general population, t~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

2. **QAP, §11.7(4) Tie Breaker Factors**
   Additionally, MREC suggests a revision to the fourth tie breaker to evaluate the distance of proposed developments to the nearest existing tax credit development serving the same population type. Suggested language:

   (4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

3. **QAP, §11.9(c)(4) Opportunity Index**
Currently an index 1 score of 77 is being used as the standard for elementary schools to meet the definition of a high opportunity area. In previous years this was the statewide median for both elementary schools and all schools combined. This year, the elementary school median index 1 score has dropped to 76. We believe that because this scoring item is directly tied to elementary schools, that the statewide median elementary school index 1 score of 76 should be used. Suggested language:

(A) For Developments located in an Urban Area…
(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (7 points);
(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);
(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (5 points);
(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement.

4. **QAP, §11.9(c)(5) Educational Excellence**
As stated above related to Opportunity Index, data released by the Texas Education Agency (TEA) in 2015 shows that the statewide elementary school index 1 score has decreased to 76. We think it is appropriate to use an index 1 score of 76 for Opportunity Index. Additionally, MREC thinks it is most logical to have a single index 1 score for elementary schools across scoring criteria, which is why we are suggesting that the change in elementary school index 1 score flow through to Educational Excellence. We are not suggesting a change to the index 1 score used for middle or high schools. Suggested language:

(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the

middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

5. **QAP, §11.9(c)(6)(C) Underserved Area (Never received an allocation)**
In an effort to ensure that communities have the opportunity to have a broad range of populations served, we believe that this scoring item should only take into account developments of the same type. Proposed language change below:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

6. **QAP, §11.9(c)(6)(F) Underserved Area (Employment Growth)**
While we support the concept, we cannot support the language as written. Any proof associated with this item needs to be completely objective and available to the public at large therefore we recommend removing this scoring criteria.

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point);~~

7. **QAP, §11.9(c)(6)(G) Underserved Area (Population Growth)**
Accurate demographic information related to the growth at the census tract level does not exist. We believe that growth at the Place level is a more appropriate indication of growth of a community as a whole. Proposed language change below:

(G) A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years. ~~provided the census tract does not comprise more than 50% of the county.~~ .

8. **QAP, §11.9(c)(7)(A) Tenant Populations with Special Needs**
A new category within this scoring item provides the highest level of points to those Applicants who commit units to the 811 program within an existing property. While we understand that TDHCA is seeking to place 811 units quickly, the result of this new scoring category is to give a competitive advantage within the current application round based on a factor unrelated to the development being proposed within the current application. We believe this new item will have the effect of discriminating against developers solely on the basis of the siting of previous developments – those who have specialized in rural, senior, or smaller MSAs would not be eligible for these points. It gives an advantage to certain developers, not for merit, but luck of the draw for having built previously in specific urban areas.

The Department can instead offer incentives outside of the application cycle to encourage participation in the 811 program for existing portfolios. Because of this we recommend deletion of the language in its entirety:

~~(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

9. **QAP, §11.9(d)(7)(A) Concerted Revitalization Plan**

We have concerns about the subjectivity of language in the rule and feel that more specificity of what is required and will be approved would be helpful. Additionally, in order to support the revitalization efforts of larger cities we are suggesting that a city be allowed to designate more than one development as significantly contributing to revitalization. We suggest the following changes:

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an ~~distinct~~ area that ~~was once vital and has lapsed into a situation requiring~~ has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~ adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan ~~that~~ should meet~~s~~ the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been ~~in~~dentified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of ~~violent~~ crime~~, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances~~ or overt illegal activities; and/or

(-c) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.

(III) Staff will review the ~~target area for presence of the problems identified in the~~ plan ~~and~~ for targeted efforts within the plan to address ~~those~~ the problems identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;
(-b-) developing health care facilities;
(-c-) providing public transportation;
(-d-) developing significant recreational facilities; and/or
(-e-) improving under-performing schools.
However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have~~ identify sufficient and~~,~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission. ~~been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official ~~providing documentation of measurable improvements within the~~ certifying the identified revitalization area, that the development is located within the revitalization area, and that the plan meets the requirements of subsections I, II and IV of this section; ~~based on the target efforts outline in the plan;~~ and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing ~~most~~ significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may ~~only~~ identify no more than three ~~one single~~ Developments during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at preapplication). If multiple Applications submit resolutions under this subclause from the same Governing Body, then not more than three ~~none~~ of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing ~~most~~ significantly to concerted revitalization efforts.

10. **QAP, §11.9(e)(2) Cost of Development Per Foot**
Construction costs have increased significantly over the last three years and we request that the cost per foot figures be increased by $10 per square foot to reflect these increases.

11. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iii) Undesirable Neighborhood Characteristics**
The additional criteria to evaluate blight is too subjective to administer in a consistent way. Additionally, this criteria may result in the ineligibility of sites in high opportunity areas or revitalization areas that are rapidly improving simply due to the presence of a de minimis number of blighted structures. Therefore we recommend the deletion of this language in its entirety:

~~(iii) The Development Site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.~~

12. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iv) Undesirable Neighborhood Characteristics**
Certain school districts in the larger urban areas will struggle to meet the new TEA threshold standards, because they are indeed new standards. As a result, this section will redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff. Therefore we suggest a deletion of this language in its entirety:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

13. **Multifamily Rules, Subchapter B, §10.101(b)(4) Mandatory Development Amenities**
We request that central air not be required for acquisition/rehabilitation properties where the units currently operate with PTACs. Modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and reasonable ceiling height. Suggested language change:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation); and

14. **Multifamily Rules, Subchapter B, §10.101(b)(5) Common Amenities, §10.101(b)(6)(B) Unit and Development Features, and §10.101(b)(7) Tenant Supportive Services**
Proposed 2016 language requires program participants' obligations past the compliance period. This is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff. Therefore, we request that the timeframe under each of these sections be restored to the compliance period rather than the extended use period.

15. **Multifamily Rules, Subchapter D, §10.302(d)(1)(A)(i) Market Rents**
We recommend a deletion of the new language which limits underwritten market rents to the 60% AMI Net Program Rent. This new policy is a one size fits all approach to a problem observed by the REA Division in a limited scope, and this type of uniform limitation does not appropriately evaluate developments across the state. Therefore, we suggest that TDHCA rely upon the market study it requires applicants to have prepared. Suggested language is as follows:

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. ~~For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.~~

16. **Multifamily Rules, Subchapter D, §10.302(e)(7)(F) Developer Fee**
We respectfully disagree with the concept of fixing developer fee at a specific amount at the time of Application. With increased cost, comes increased risk, increased guarantees, and reduced margins. The developer fee is the deal's contingency and limiting this buffer only serves to make a deal weaker financially. Because applications are submitted almost a year in advance to breaking ground, it makes little sense to penalize the developer for market forces that they cannot control. Furthermore, given the limited time frame from publication of rules to submission of an application it is not feasible or reasonable to expect a developer to fully understand all of the potential challenges, issues, and difficulties a deal may encounter during its life cycle. The IRS and TDHCA rules set out what is a proper incentive for developers to produce affordable housing and we do not believe it is in the best interest of the program to artificially limit the fee at the time of application. Because of this we recommend deletion of the language below in its entirety:

~~(F) The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

17. **Multifamily Rules, Subchapter E, §10.402(j)(3)(B)(xxiv)**
    We requests that this revert to 2015 requirement for a 15 year pro forma instead of proposed 30 year pro forma for consistency with the application requirements, and past TDHCA policy at cost certification.

18. **Multifamily Rules, Subchapter E, §10.405(4)(H) Amendments and Extensions**
    Language was added to the rules that would require an Applicant to get an amendment if there are significant increases in development costs or changes in financing.

    We oppose the language for three reasons: 1) With no precise definition of "significant" an Applicant would have no way to determine if an amendment is required; 2) Development is a fluid process and changes in the market, code interpretations, and site development issues can all cause increases at any time before or after closing. Having to get an amendment prior to closing will serve to delay closings and put the deal in greater jeopardy. Having to go back for an amendment after closing for something that cannot be addressed, changed, or fixed by the Department adds additional paperwork and effort that serves no meaningful purpose; 3) The Developer, Lender, and Syndicator are responsible for determining the feasibility of a deal after award. Together they take the best information available and make the decision to proceed or not. Post construction, the lender and/or syndicator enforce review and approvals of all changes either of a single dollar amount or a cumulative dollar amount thereby providing sufficient oversight to the cost of the development. Since tax credits are capped upon award, there is not risk to the department for these additional costs or financing changes. Because of this we recommend deletion of the language below in its entirety:

    ~~(H) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required;~~

We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2016 Qualified Allocation Plan and Multifamily Rules. Please do not hesitate to contact me with any questions.

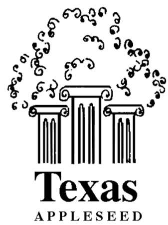
Sincerely,

Donna Rickenbacker

Donna Rickenbacker
Marque Real Estate Consultants

Cc: Tom Gouris, TDHCA
Marni Holloway, TDHCA
Teresa Morales, TDHCA

(32) Texas Appleseed/Texas Low Income Housing Information Service



October 15, 2015

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941
VIA EMAIL: Teresa.Morales@tdhca.state.tx.us

RE: Joint Comments of the Texas Low Income Housing Information Service and Texas Appleseed on the proposed 10 TAC, Chapter 11, Qualified Allocation Plan §§11.1-11.10

Dear Ms. Morales:

We offer these recommendations regarding the 2016 State of Texas Qualified Allocation Plan (QAP) for allocation of Low Income Housing Tax Credits (LIHTC).

This year TDHCA is considering various changes to the QAP. We encourage the Department to evaluate these changes by two important guiding principles:

- **Rewarding applications in High Opportunity Areas is necessary to offset the historical geographical imbalance of units created through the LIHTC program.**
- **Serving Very Low and Extremely Low income Texans is an important function of the LIHTC program**

We have incorporated these guiding principles and common sense in additional, specific comments regarding the proposed changes. While many of the proposed changes hold the promise of incremental improvements to the program, others raise new concerns. Our comments follow.

§11.9. (d) (7) Concerted Revitalization Plan.

While we agree in spirit with the department's stated vision that points for a Concerted Revitalization Plan (CRP) should be allocated to applications in which "the problems identified within the [Revitalization] plan will have been sufficiently mitigated and addressed prior to the Development being placed into service," we believe the presented framework lacks objective benchmarks and will become just another "letter from a local official," this one promising that things are already looking better and will be great by the time the units are put in service.

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The proposed language allows an "appropriate local official" to choose the "measureable improvements" used for documentation. This processes is begging to be gamed. For example, under the current language, it is conceivable that a local official could claim points for a reduction in stray dog 311 calls. Outline explicit benchmarks in the rules now to prevent such gaming.

We suggest the department look at three metrics over three years:

1) Tract Poverty (Census)
2) Tract Income (Census)
3) Neighborhood Land Values relative to Place (Appraisal District)

CRP points should be awarded only to applications that show a statistically significant improvement on two of these three metrics over a three-year period since the date of the adoption of the CRP. While this timeline is longer than that allowed by the current language, it recognizes that true revitalization takes an extended commitment in local and private resources.

Also on this topic, we do not view developing health care facilities (see A.i.(III).b) as augmenting a desirable neighborhood. There is a long tradition of relegating clinics and public hospitals to areas with low land values and few residential amenities. We suggest striking this language.

§11.9.(c) (6) (A) Underserved Areas - Colonias

We support the language presented, which strikes an appropriate balance between giving preference to LIHTC units in high opportunity areas and making the resources of the LIHTC program available to developments that help provide for the infrastructure needs of colonias.

§11.9.(c) (6) (E) Underserved Areas - No other tax credit units

Mere lack of existing tax credit housing should not qualify for a point in scoring. (For example, the fifty Texas census tracts with zero existing housing units of any type would qualify for these points.).

This point should be only available to applications proposing new housing that also qualifies for points under the opportunity index above.

§11.9.(c) (6) (F) Underserved Areas - new business facility

We disagree that building a new business facility within 5 miles merits preference for an allocation of credits.

In many urban areas, a five-mile radius would cover neighborhoods of a wide variety of quality and a fifty-person facility would have a negligible impact on the economic opportunities available to the area's population. In smaller areas, a fifty-person facility may represent a notable change in local conditions, but the state should not be choosing the placement of 30-year housing infrastructure by chasing after the recent employment activity of a single employer. We also note that other than

wage level, there is no restriction on the type of business that qualifies a development for this point. Given the lack of zoning in non-metropolitan and some metropolitan areas of the state, this could incentivize development near businesses unsuitable for a residential area.

We suggest striking this point category.

§11.9.(c) (6) (G) Underserved Areas - high growth areas

This point area appears to be an attempt to identify areas that are rapidly changing. We suggest that the language be refined to identify areas that are rapidly changing for the better. Similar to the suggestions in the CRP language above, we suggest the department look at three metrics in addition to population growth:

1) Tract Poverty (Census)
2) Tract Income (Census)
3) Neighborhood Land Values relative to place (Appraisal District)

Growth points should be awarded only to applications which show a statistically significant improvement on two of these three metrics over the decennial measurement period.

The department should also clarify the draft language to make explicit that population growth is the "growth" variable under discussion.

The department should also clarify how the 120% is applied and consider whether that is a meaningful benchmark. If a county has a 1% growth rate, 120% of the county growth rate is 1.2%. A tract with a 1.21% growth rate hardly seem like it deserves points for being an "underserved" area due to its growth rate. If this language remains, it should, at the very least, include a "floor" growth rate.

We recommend ranking tracts by growth rate by TDHCA service region, and awarding these points to the top 10% tracts in each region, provided that they also meet the poverty, income, and land value metrics described above (and have a large enough starting population base to make the % growth rate meaningful, say 3,000, which is about the ~75 percentile tract in the state)

§11.2 – Program Calendar

We support the proposed changes relating to the due date of local government and state representative letters.

§11.3(d)–Limitations on Developments in Certain Census Tracts

We disagree with the language allowing local jurisdictions to "waive" the limitation on packing more tax credit units into neighborhood where the existing installed base of tax credit units makes up one in five of the housing units in a jurisdiction.

In 2015, only 115 of the state's 5265 census tract bumped into this limitation. These neighborhoods are the most egregious examples of over-concentration of LIHTC units, and the state should prevent further unit placement in those areas.

We ask the department to make 20% a meaningful, hard cap, and to lower the waivable cap to 10%.

§11.4 (c)(2) Small Area Difficult Development Area

We support this change, which recognizes HUD's recent work to identify small area differences in market rent.

§11.6(3) – Award Recommendation Methodology (HB 3311)

It is unfortunate that the department will be using non-public data in its calculations to implement HB3311. We ask that the department make the details of its calculations public, i.e. identifying the HISTA variable names and definitions used in its calculations. We note that the data presented to the legislature by TDHCA during the discussions regarding the expected impact HB 3311 used the relative elderly vs non-elderly *renter* populations in its calculations of the regional unit caps. This data choice is the most appropriate in statutory context and this methodology should not change in the actual implementation of the bill. (To do otherwise would make TDHCA's earlier testimony, upon which the legislature relied when adopting the language, misleading.)

11.9(c)(8) Aging in Place

We support the proposal of other commenters to extend these points to Single Room Occupancy developments.

§11.7 Tiebreaker Factors

We support these changes, which prevent the over-reliance on the distance tiebreaker created by the lack of detail in the opportunity index.

§11.9(b)(2)(B) Previous Participation Compliance History

We support this language, which addresses applicants with a negative compliance history but does not discourage new entrants to the competitive process. We suggest one additional criteria:

Non-compliance with Housing Sponsor Reports (HSR) requirements is a persistent problem facing TDHCA. The HSR provides important insight into the activities of existing properties, but as noted in the most recent Housing Sponsor Report summary available on the TDHCA website, (2013) "Not all properties returned the Housing Sponsor Report forms." This previous compliance point should also be unavailable to any applicant with a portfolio that includes a relevant property that has failed to timely and completely file an HSR in the last three years.

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§11.9 (e)(6) Historic Preservation

We oppose this change, which increases the emphasis on historic structures relative to other factors far beyond what is necessary to comply with TDHCA's statute as modified by SB1316. (The existing language suitably incentives historic preservation when it is appropriate.) In addition to re-coupling these points with the extended affordability option, maintaining the per-unit cap, and returning the point structure to four points, the department should require the majority of development costs be covered by the accompanying historic tax credits to get these points.

The board heard testimony by Ms. Burchett of Structure Development, who stated: "However, with four points it's impossible to be competitive with high opportunity or community revitalization in almost all circumstance in these donut areas that have come up earlier in the conversation. Because downtown is usually not where the wealth is, and that's where the historic buildings are."

This implies that the purpose of these points is to prioritize the building itself beyond the needs of the families within them or the neighborhoods in which they are found. That is not consistent with the housing goals of the department. The current points suitably prioritize historic buildings over new construction when they are in areas with opportunity for the families within them, or when they are in areas that have undergone the comprehensive revitalization necessary to provide opportunity to the families who will call the building home.

11.9(c)(4) Opportunity Index

We recommend that the Department make (4)(A) consistent with (4)(B) by substituting "the Development Site has access to services specific to a senior population within 1 mile" for the "school attendance zone" criteria. The proposed point structure encourages developers to substitute elderly-only developments for family developments in high opportunity areas with access to good schools.

11.5(2) USDA Set-Aside

We support the presented language.

§11.9. (d)(5) - Legislative support letters

The statutory language outlining the priority of the legislative support letters is in conflict with the draft language presented. The statute ranks the priority, not the scoring, and the 16 point spread between the positive 8 and negative 8 points for legislative letters gives those letters priority above neighborhood organizations. We suggest reducing the spread between positive and negative letters to 8 points to comply with the statutory language. Make positive letters 6 points, and as other commentators have suggested, make negative letters negative -2 points.

Additionally, we support the idea, proposed by other commentators, of conditioning the award of positive and negative points based on whether or not the municipality or State representative provided the developer with a statement of reasons for the opposition and provided the developer with an opportunity to respond to the opposition.

11.9(d)(1) Local Government Support
11.9(d)(4) Quantifiable Community Participation

We support the addition of the language stating "Once a letter is submitted to the Department it may not be changed or withdrawn," in reference to Local Government Support and QCP letters.

11.9(d)(4) Quantifiable Community Participation

TDHCA's process for registering neighborhood associations is unnecessary and duplicative of the functions of the secretary of state and the county. Remove the TDHCA staff process and recognize associations on record with the county of secretary of state as of the 1st of the year of the award year. The unnecessary nature of TDHCA's additional process, and rules that allow groups as small as two people to have a nine-point impact on an application, is an impediment to fair housing choice, and conflicts with the State's commitment to reduce Not In My Backyard syndrome (NIMBYism) in its State of Texas Plan for Fair Housing Choice: Analysis of Impediments.

Thank you for considering our comments to the publically posted draft rules.

Sincerely,

Madison Sloan, staff attorney
Texas Appleseed

John Henneberger, co director
Texas Low Income Housing Information Service

(33) Casa Linda Development Corporation

VIA EMAIL

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701-2410

Re: Public Comment to 2016 Draft Qualified Allocation Plan and Multifamily Rules

Dear Mr. Irvine,

We submit the following recommendations as proposed changes to the 2016 Draft Qualified Allocation Plan and Multifamily Rules:

2016 Draft Qualified Allocation Plan

§11.9(c)(6)(E) - Underserved Area - A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point)

> **-Change language to A Place, or if outside of the boundaries of any Place, a County that currently does not have more than one (1) competitive tax credit allocation or a 4 percent non-competitive tax credit allocation awarded prior to 2001 (15 years) (1 point).**

Section 11.9(c)(6)(E) in the 2016 Draft QAP Draft current language allows an applicant to receive one point for a development in a **census tract** that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years. This rule by definition awards one point for a census tract that has an **existing** tax credit development. This puts a Development in a Census Tract with no existing tax credits at a one point disadvantage. Please refer to Attachment A. The Census Tracts identified have existing tax credit properties awarded in 1994, 1998 and 2001. These census tracts would have a one point advantage to the surrounding census tracts that have none. This does not appear to meet the spirit of the definition of Underserved Area.

11.9(c)(6)(F)-Underserved Area - Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point)

> **-Delete this point item in its entirety.**

Section 11.9(c)(6)(F) language is too broad, leaves too much interpretation to Staff and the area (5 miles) is too large. What will developers provide as a definitive source for the information? We reviewed all prior public comment and did not see any suggestions as to required support. We also feel this language in §11.9(c)(6)(F) is better suited for Community Revitalization criteria once there is a consensus on definitive support material .

11.9(c)(6)(G)-Underserved Area - A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point)

-Delete this point item in its entirety

Section 11.9(c)(6)(F) language is terribly confusing and leaves too much interpretation to Staff. What will developers provide as a definitive source for the information? We reviewed all prior public comment and did not see any suggestions as to required support.

§11.9(c)(7)(A) - Tenant Populations with Special Housing Needs - Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

1. Delete §11.9(c)(7)(A) in its entirety to prevent an unfair statewide advantage for those developers whose portfolios include Section 811 PRA Program eligible inventory; or
2. §11.9(c)(7)(A) should be limited to no more than two (2) points rather than three (3) points, in order to provide statewide fairness to all developers.

Section 11.9(c)(7)(A) in the 2016 QAP Draft aims to award developers three (3) points if they have existing developments in their portfolios that can participate in the Section 811 PRA Program. By rule, these developments can only be located in the 7 large urban Metropolitan Statistical Area (MSAs). For developers that were fortunate enough to have previously developed in these locations, this creates unfair leverage for scoring purposes, particularly against all other developers in the state who are not fortunate enough to have existing 811 PRA Program eligible inventory in these markets.

According to Staff this rule allows developers with 811 Program eligible inventory to apply in regions outside of the 7 large urban MSAs and receive 3 points for committing Section 811 eligible units. This automatically puts developers with 811 Program eligible inventory at a huge advantage over those developers without eligible inventory. We also understand that while the rule is silent, Applicants can solicit Owners/Developers with 811 eligible inventory. This allows owners with 811 Program eligible inventory to sell their units to an Applicant applying in the current round. This simply is not good practice.

While we understand that §11.9(c)(7)(A) is being proposed to get more participation in the 811 PRA Program, we have never seen a proposed rule which benefits only those who were fortunate enough to have developed in certain areas of the State.

We offer the following alternatives to increase the number of 811 Eligible Units from other programs offered by TDHCA:

1. Place a threshold requirement on non-competitive 4% tax credit applications. Most of these transactions are awarded in the 7 large MSAs. We recommend a tiered approach: <100 Units - (10) 811 Units, 100-200 Units - (20) 811 Units, >200 Units - (30) 811 Units.

2. Propose a NOFA to Owners of 811 Eligible Properties in the entire TDHCA Portfolio a TCAP grant of $150K for committing (15) 811 Eligible Units. This can be limited to a certain number of developments.

2010 Kessler Parkway, Dallas TX 75208
214-941-0089

Multifamily Rules

Subchapter D - Underwriting and Loan Policy
10.302(d)(1)(A)(1) - Market Rents - For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.

We disagree with the suggested proposed language. We confirmed with Staff the Net Program Rent suggested is net of the utility allowance. This rule discourages Applicants to provide mixed income properties. We recommend using the 60% gross rent or a set amount above the 60% rent for each unit type i.e. $65 increase for a one bedroom, $90 for a two bedroom and $115 for a three bedroom. This will create a consistency across the board for underwriting.

Thank you in advance for your consideration. Please contact me at sreidy@ess-email.com or 214-941-0089 if should have any questions or need further clarification.

Sincerely,

Sara Reidy
Casa Linda Development Corporation

THURSDAY, OCTOBER 15, 2015

EXHIBIT A

HUD.GOV
U.S. Department of Housing and Urban Development
Secretary Julián Castro

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QUALIFIED CENSUS TRACTS

The 2015 Qualified Census Tracts (QCTs) are effective January 1, 2015. The 2015 desigantion uses data from the 2010 Decennial Census and three releases of 5-year tabulations from the American Community Survey (ACS): 2006-2010; 2007-2011; and 2007-2012. The revised designation methodology using three years of ACS data is explained in the Federal Register notice published October 3, 2014 (http://www.huduser.gov/portal/Datasets/QCT/DDA2015_Notice.pdf).

harlingen, tx Go Select a State Select a County Go

Map Options : Clear | Reset

QCT Legend: Tract Outline | Qualified Census Tracts (2014 Only) | Qualified Census Tracts (2015 Only) | Qualified Census Tracts (2014 & 2015) | LIHTC Project

QCT Options

14 Current Zoom Level

- Show Tracts Outline (Zoom 11+)
- Show LIHTC Projects (Zoom 11+)
- Color Qualified Tracts (Zoom 7+)

Second Adams - MF - 1994

Highland Gardens - MF - 2001

Sundance - MF 1998

(34) Barry Palmer, Coats Rose

BARRY J. PALMER

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(713) 890-3944

October 14, 2015

By Email: Teresa.Morales@tdhca.state.tx.us

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
Attn: Teresa Morales

RE: Comments on Draft 2016 Uniform Multifamily Rules and Qualified Allocation Plan.

Dear Teresa:

Please accept these comments to the Draft 2016 Uniform Multifamily Rules and Qualified Allocation Plan:

RULES:

1. **Section 10.03(a)** – We request that a definition be provided for "placed in service" that is the definition used in connection with Section 42 of the Internal Revenue Code. At this time, the term is used in the Rules, but is not defined.

2. **Section 10.03(a)(47)(B)** – The current definition of "Elderly Preference Development" appears to extend to any housing that has HUD or certain other Federal funding, regardless of whether the developer's intent is to give a preference to the elderly. Is this a correct interpretation? If not, we request that the language be appropriately modified.

3. **Section 10.101(a)(4)(B)(ii)** – We recommend that the language return to that used in 2015. Neighborhoodscout.com has been shown to be a questionable measure of neighborhood crime. In 2015 there were at least alternatives that could be used to counter neighborhoodscout.com scoring.

4. **Section 10.101(a)(4)(B)(iii)** - We support the TAAHP recommendation that the presence of "blight" be deleted as an Undesirable Neighborhood Characteristic, due to the subjectivity of its identification. Revitalization of a neighborhood frequently progresses from the fringes of an

older area toward its center, and it is hard to assist in the revitalization of an area if a developer is limited to sites only in the redeveloped portion of that neighborhood.

5. **Section 10.101(a)(4)(B)(iv)** – We support the TAAHP recommendation to delete this provision concerning schools. The determination of whether there exists an Undesirable Neighborhood Characteristic is simply too complicated in this provision.

6. **Section 10.101(a)(4)(E)(iii)** – We recommend revising "is necessary to enable" to read "enables", so that there is no implication that Fair Housing goals may only be achieved with the project in question.

7. **Section 10.302(e)(7)(A)** – We support the Staff's revision permitting public housing authority developments converting under the HUD Rental Assistance Demonstration ("RAD") Program and financed using tax-exempt mortgage revenue bonds to have a developer fee not to exceed 20% of eligible cost less developer fee.

8. **Section 10.302(e)(7)(C)(ii)** – We recommend deletion of this subsection denying developer fee attributable to acquisition credits in an identity of interest acquisition. A third party appraisal is required in identity of interest transactions, so there is an arm's length determination of the value of the improvements to support any claim made for tax credits. The fact that the development was acquired from a related party should be overcome by the evidence of the appraisal, and the relationship between seller and buyer rarely serves to significantly reduce the complexities of the development process. In the alternative, we recommend that transactions in which housing authorities sponsor rehabilitation of existing developments be an exception to this provision. Where a housing authority redevelops existing public housing, the time-consuming element of dealing with HUD to obtain consents necessary for the rehabilitation and financing are a significant factor, and the developer should be compensated for that effort.

QAP:

9. **Section 11.9(b)(2)(B)** – We recommend delaying implementing this provision relating to Previous Participation Compliance History until the 2017 Round, at which point developers will know what categories they fall into and will assess their application potentials accordingly.

10. **Section 11.9(c)(6)(F)** – We recommend deleting this new provision on the grounds that it will be exceedingly difficult to substantiate that there is a workforce employing 50 or more persons at or above the average median income for the population in which the Development is located.

11. **Section 11.9(c)(6)(G)** – We recommend deleting this new provision on the grounds that it will be exceedingly difficult to substantiate, unless the Department includes this information in the 2016 HTC Site Demographic Characteristics Report.

12. **Section 11.9(d)(2)** – This subsection for Commitment of Development Funding by Local Political Subdivision should contain the following language, as is already provided in Sections

11.9(d)(1); (d)(4); (d)(5); and (d)(6): "Once a resolution is submitted to the Department it may not be changed or withdrawn."

13. **Section 11.9(d)(7)** – We support the TAAHP recommendation to return to the 2015 language for Community Revitalization Plans.

14. **Section 11.10** – We recommend that Third Party Requests for Administrative Deficiency for Competitive HTC Applications be limited to one submission per Application by any single third party Requestor. Even if this limitation is implemented, we envision the Department being hit with multiple requests from related persons, each of whom would qualify as a "third party." This potential may substantially hinder the evaluative process if a June 1st deadline is used, so an earlier deadline is recommended.

Thank you for the opportunity to provide our comments on the draft Rules and QAP. If you have any questions concerning our suggestions, please do not hesitate to call.

Very truly yours,

Barry J. Palmer TAB

Barry J. Palmer

(35) Scott Marks, Coats Rose

SCOTT A. MARKS

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Direct Dial
(512) 684-3843
Fax
(713) 890-3911

October 15, 2015

Ms. Teresa Morales
TDHCA
221 East 11th Street
Austin, Texas 78701

Re: 2016 Uniform Multifamily Rules and QAP

Dear Teresa:

Please accept these comments on the draft Uniform Multifamily Rule and Qualified Allocation Plan.

1. Award Cost Per Square Foot Points based only on costs claimed for tax credits

Section 2306 requires the Department to score applications based on the cost of the development per square foot. This scoring item has led to a number of administrative and underwriting challenges over the years. In the City of Austin, for example, there have been some vast increases in total development budget from 9% housing tax credit application to cost certification in recent years.

The QAP focuses on hard cost, a subset of total development costs, and on net rentable area, a subset of a project's square footage. TDHCA at some point made a policy decision -- one not required by statute – to disregard soft costs in the numerator of the formula and to disregard project square footage such as community space.

The way this scoring item has worked in practice is that developers submit numbers at application without doing due diligence on construction costs, knowing that the application will cap the award of tax credits but not cap actual construction costs in the field. The downside to this approach for TDHCA, the development community, and taxpayers is that it renders underwriting reports at application almost meaningless.

A more constructive approach would be to allow developers voluntarily to cap the amount of tax credits generated by their hard costs in order to qualify for points. This would

involve a policy choice with the same logic as the one in the 2015 QAP – disregarding certain costs and certain space – but with the policy advantage of encouraging due diligence and full disclosure at application.

We recommend adding this sentence to the end of the cost per square foot scoring item:

> "This calculation does not include Hard Costs voluntarily excluded from eligible basis."

2. HB 3311 should not apply to the At-Risk Setaside

The senior parity legislation, HB 3311, focuses on subregions. For example, the bill caps the "percentage of the available housing tax credits allocated to developments located in that subregion" and the definitions all include the phrase "in the subregion." Sub-region has been defined as "each Rural Area and Urban Area of each Uniform State Service Region." Because the Department has traditionally disregarded subregions in allocating under the At-Risk Setaside, which has been stated in the QAP for some time, the legislative intent behind HB 3311 is that it should not apply to the At-Risk Setaside.

3. We agree with the TAAHP recommendations on undesirable neighborhoods

We agree with the TAAHP changes to the section regarding incidents of violent crime:

"(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com."

The proposed new blight restriction – location within 1000 feet of more than one structure in disrepair— is too restrictive. Bad housing conditions are a reason to invest in an area. The need for repairs is a legitimate governmental justification, and the Legislature affirmed that as a priority of the state by, for example, creating the At-Risk setaside. Consistent with the Supreme Court decision on the Fair Housing Act, the Department may make awards in neighborhoods when there is a valid governmental interest for those allocation decisions, and ameliorating blight and bad housing conditions is a valid, and perhaps one of the best, justifications for investing in a neighborhood with the low-income housing tax credit program.

We propose removing the blight restriction from undesirable neighborhood characteristics.

If any of the neighborhood characteristics will otherwise make a site ineligible, it can still be reborn, but only if the developer satisfies a new proposed requirement of a letter from a city that the site is necessary to enable the participating jurisdiction to comply with its obligation to affirmatively further fair housing. The example the Department offered at the Thompson Center Q&A meeting was Galveston, where a letter could theoretically have been provided that the site was necessary to comply with the duty of affirmatively furthering fair housing.

We disagree with this approach, and with the use of undesirable neighborhood characteristics as a proxy for race in the QAP. Instead of disqualifying areas because of racial demographics, this approach toward fair housing seems to substitute a proxy for racial concentration such as high crime or blight. The disqualification of neighborhoods based on race,

or based on a proxy for racial concentration, is only fair if there are broad exceptions. HUD site and neighborhood standards have always recognized broad exceptions for economically revitalizing areas and for rehab projects, and the Department similarly should broaden its exception to allow a site that is consistent with fair housing obligations.

We agree with the TAAHP-recommended fair housing exception:

(iii) The Development is ~~necessary to enable a state, a participating jurisdiction or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD-approved Conciliation Agreement, or a final and non-appealable court order~~ consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the city's or county's HUD consolidated plan.

4. Award Concerted Revitalization Plan Points to HUD Revitalizing Areas

The draft QAP Concerted Revitalization Plan points [11.9d(7)] revisions are too restrictive. This scoring item has been very contentious over the years, and is also related to Fair Housing. Site and neighborhood standards guidance from HUD would be helpful to the Department in drafting a Revitalization point category under the QAP that is consistent with HUD's interpretation of the Fair Housing Act. HUD has always carved out an exception for revitalizing areas in the site and neighborhood standards. Examples of revitalizing areas at 24 CFR 983.57(e)(3)(vi) include "sites that are an integral part of the overall local strategy for the preservation or restoration of the immediate neighborhood and sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a '**revitalizing area**')."

The HUD definition captures *gentrifying* areas such as central East Austin, where minorities are being displaced because of private investment. TDHCA's current proposed 2016 draft misses out on funding areas of gentrification where there is revitalization and significant private investment. The African-American population dropped by more than 5% in the past ten years in the city of Austin, the only growing city in America where this occurred. We urge the Department to adopt HUD's definition of a "revitalizing area" as qualifying for full points for community revitalization plans.

5. Compress above-the-line scoring to increase weight of below-the-line items

By further compressing above-the-line scoring, so that the maximum points for financial feasibility are only 13 points and a State Representative letter is worth only four (4) points, the Department can amplify the effect of below-the-line scoring items such as the Underserved Areas. This scoring change could offset the trump card of NIMBYs that played out in the 2015 round. Negative QCP letters could also lead to deducting fewer points – perhaps only a deduction of minus two points.

Below is the scoring matrix we propose:

Scoring Item	Current	Proposed
(A) financial feasibility	18	13
(B) QCP/local govt	17	12
(C) income levels of tenants	16	11
(D) size/quality of units	15	10
(E) rent levels of units	13	9
(G) cost development/sq ft	12	8
(H) services to tenants	11	7
(I) disaster declaration	10	6
(J) QCP/neighborhood	9	5
(K) State representative support	8	4
(L) Opportunity Index	7	3
(M) Community Revitalization Plan	6	2
(N) Educational Excellence	5	3
(O) Historic Preservation	5	3
(P) Community Support	4	3
(Q) Aging in Place	3	3
(R) Tenants with Special Needs	3	2
(S) Leveraging	3	2
(T) Underserved	2	2
(U)Sponsor Characteristics	2	2
(U) Extended Affordability	2	1
Total	171	111

We appreciate the Department's efforts to solicit public input. Please contact us at (512) 684-3843 if you would like to discuss our comments.

Sincerely,

Scott

Scott A. Marks

(36) Texas Coalition of Affordable Developers

TX-CAD 2016 QAP Rules Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2016 QAP. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

1. **Section 11.(3) Tie Breaker**

   The language with this tie break item could be interpreted in two ways and needs to be clarified to ensure that all Applicants understand exactly how it will be handled by staff. We believe that all types of developments should be subject to this tie break item if the previous factor results in a continued tie.

   Proposed language change below:

   (3) ~~For competing Applications for Developments that will serve the general population,~~ The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

2. **Section 11.9(b)(2)(B) Sponsor Characteristics (Previous Participation)**

   We do not believe that it is good policy to have a scoring item based on a rule/review system that has not been fully implemented or understood. The Compliance rules have only just recently been approved and neither the development community, nor the Department has a clear understanding of the impact of these rules. At this time, there is no way for an Applicant to get a definitive category score from TDHCA. Because of this we recommend deletion of the language in its entirety:

   ~~(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2,3, or 4 as determined in accordance with 10 TAC §1.301, related to previous Participation.~~

3. **Section 11.9(c)(7)(A) Tenant Populations with Special Needs (3 points for an Applicant who commits units to the 811 program within an existing property**

   We do not believe that the QAP should discriminate against developers solely on the basis of the siting of previous developments – those who have specialized in rural, senior, or smaller MSA's

would not be eligible for these points. It gives an advantage to certain developers, not for merit, but luck of the draw for having built previously in specific urban areas.

The Department can instead offer incentives outside of the application cycle to encourage participation in the 811 program for existing portfolios.

Because of this we recommend deletion of the language in its entirety:

~~*(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.*~~

4. Section 11.9(c)(8)(A) Aging in Place

We have concerns about the marketing and cost implications of developments that are designed as 100 fully accessible. As echoed by staff at the October 9th question session, adaptability is a more appropriate approach to addressing aging in place issues. Because of this we recommend the following language change:

(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

~~*(A) All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points).*~~

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination of the Basis of Disability in Federally Assisted Programs and Activities") the Applicant will build 50% of the units with adaptable design features as specified in 24 CFR 100.205(c) (1)-(3).

5. Section 11.9(d)(7)(A) Concerted Revitalization Plan

We have concerns about the subjectivity of language in the rule and feel that more specificity of what is required and will be approved would be helpful.

Proposed language change below:

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an ~~distinct~~ area that ~~was once vital and has lapsed into a situation requiring~~ has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan ~~that~~ should meet~~s~~ the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been i~~n~~dentified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;
(-b-) declining quality of life for area residents, such as high levels of ~~violent~~ crime~~, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances~~ or overt illegal activities; and/or
(-c) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.

(III) Staff will review the ~~target area for presence of the problems identified in the~~ plan ~~and~~ for targeted efforts within the plan to address ~~the~~ problems that may be identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;
(-b-) developing health care facilities;
(-c-) providing public transportation;
(-d-) developing significant recreational facilities; and/or

(-e-) improving under-performing schools.

However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have~~ identify sufficient and ~~,~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced prior to the Application submission. ~~This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official ~~providing documentation of measurable improvements within the~~ certifying the identified revitalization area, that the development is located within the revitalization area and that the plan meets the requirements of sections I, II and IV of this section; ~~based on the target efforts outline in the plan;~~ and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application identifying the development to receive these additional points (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

6. 30% Boost for Difficult to Develop Areas

Based upon discussion of the boost eligibility for DDAs at the September Board meeting, the phrase “or if required under Section 42 of the Code” was added to Section 11.4 (c). **We request a further definitive statement in the QAP that DDAs are eligible for the boost.** The current language implies that the Applicant would have to prove that the boost is required and would still leave doubt on the part of the Applicant of the Department’s determination. Section 42 is clear in its language that any development located within a DDA shall receive the boost.

7. Section 11.9(c)(4)(A)(i), (ii), and (iii): Opportunity Index

Currently the figure of 77 is being used for the score needed for elementary schools to meet the definition of a high opportunity area. In previous years this was the statewide average for both

elementary schools and all schools combined. This year, the elementary school figure has dropped to 76. We believe that because this scoring item is directly tied to elementary schools, that the elementary score of 76 should be used.

Proposed language change below:

(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a ~~77~~ 76 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) (ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a ~~77~~ 76 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) (iiI) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating Page 19 of 34 and has achieved a ~~77~~ 76 or greater on index 1 of the performance index, related to student achievement (5 points);

8. Section 11.9(c)(6)(C) Underserved Area (Never received an allocation)

In an effort to ensure that communities have the opportunity to have a broad range of populations served, we believe that this scoring item should only take into account developments of the same type.

Proposed language change below:

A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

9. Section 11.9(c)(6)(F) Underserved Area (Employment Growth)

While we support the concept, we cannot support the language as written. Any proof associated with this item needs to be completely objective and available to the public at large therefore we recommend removing this scoring criteria.

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point);~~

10. Section 11.9(c)(6)(G) Underserved Area (Population Growth)

Accurate demographic information related to the growth at the census tract level does not exist. We believe that growth at the Place level is a more appropriate indication of growth of a community as a whole.

Proposed language change below:

A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years. ~~provided the census tract does not comprise more than 50% of the county.~~ .

11. Section 11.9(e)(2) Cost of Development Per Foot

Construction costs have increased significantly over the last three years and we request that the cost per foot figures be updated by $10 per SF to reflect these increases.

(37) Terri Anderson

From:	TERRI ANDERSON
To:	Teresa Morales; Brent Stewart; Tom Gouris; Raquel Morales; Tim Irvine; Marni Holloway
Subject:	Comments to TDHCA Proposed 2016 Rules
Date:	Thursday, October 15, 2015 4:49:46 PM

Good evening,

Please see the comments below to the proposed 2016 Multifamily Rules":

1. Section 10.302(d)Operating Feasibility

(A) Rental Income

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI in rural markets. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study.

1. 10.201(2)(B)(iii) – shorter closing expectations for Traditional Carryforward Tax-Exempt bonds [TDHCA should not require tighter time frames, and be more development friendly understanding it is very difficult to close bond deals in five (5) months] Suggestion: Remove language.
2. 10.204(11) – Annexation of a Development Site occurring while an Application is under review to require evidence of appropriate zoning with the Commitment or Determination Notice or provide evidence of vested rights prior to construction commencement. [Involuntary Annexation is a key indicator of Housing Discrimination and to the extent a City wants to prevent the development of affordable housing, they will use this tool to prevent the award. Vested rights and other legal vehicles are available to the Developer and do not require proper zoning.]
3. 10.302(d)(4)(D)(iv) Debt Service Coverage – The Underwriter may limit total debt service that is senior to a Direct Loan where Direct Loans are the only subsidy in the proposed uses.
4. 10.204(14)(C) – Requiring an attorney statement (essentially an opinion) supporting the amount and basis for qualifications and reasonableness of achieving property tax exemption or provide a predetermination notice from the applicable appraisal district. [The Department should recognize State Law and not require a non-profit an additional

$5-$10,000 cost burden for an opinion on a proposed development]

Thank you for the opportunity to provide public comment.

Sincerely,

Terri L. Anderson, President
Anderson Development & Construction, LLC
347 Walnut Grove Ln
Coppell, TX 75019
phone: (972) 567-4630
fax: (972) 462-8715

(38) National Housing Trust

October 15, 2015

Ms. Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: Texas Draft 2016 Qualified Allocation Plan

Dear Ms. Holloway:

The National Housing Trust (NHT) is a national nonprofit organization formed to preserve and revitalize affordable homes to better the quality of life for the families and elderly who live there. The Trust engages in housing preservation through real estate development, lending and public policy. Over the past decade, NHT and our affiliate, NHT-Enterprise Preservation Corporation, have preserved more than 25,000 affordable apartments in all types of communities, leveraging more than $1 billion in financing.

The Trust fully acknowledges the entire set of preservation policies and programs established by the Texas Department of Housing and Community Affairs (TDHCA), and the comments below refer specifically to TDHCA's draft Qualified Allocation Plan (QAP) as it relates to the Low Income Housing Tax Credit (Housing Credit) program. We appreciate the opportunity to comment on Texas' draft 2016 QAP. The Trust would like to commend you on several aspects of your draft QAP:

- **Set-aside of 15% for "at risk" developments and prioritization of proposals involving preservation and rehabilitation of existing multifamily rental housing;**
- **Exemptions for preservation projects from de-concentration requirements;**
- **Green building threshold points including third-party green standards such as Enterprise Green Communities.**

The Trust would also like to offer comments on areas that we believe will help TDHCA maintain a strong record of preserving at-risk housing units in Texas.

Balancing Incentives in Areas of Opportunity and Preservation. Some states are setting priorities for the deployment of Housing Credits in previously underserved areas. The Trust supports a **balanced approach** which calls upon states to ensure that such deployment does not inadvertently disadvantage the allocation of Housing Credits for the preservation of affordable housing, wherever such housing is located.

1101 30th Street, N.W., Suite 400 ■ Washington, D.C. 20007 ■ 202-333-8931 ■ FAX: 202-833-1031

Indeed, as observed in HUD's Final Affirmatively Furthering Fair Housing (AFFH) Rule: "A program participant's strategies and actions…may include various activities…including…Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation."

TDHCA's draft 2016 QAP takes important steps towards achieving this balance, offering incentives for community targeting either in areas of opportunity, as defined through a matrix of indicators, or in areas with ongoing community revitalization efforts. However, a balanced approach of investing in all communities may often mean preserving at-risk housing even in areas that do not have a formal community revitalization plan. The preservation of affordable housing can itself be an important generator of investment within a distressed community.

By balancing these incentives, TDHCA can continue to support the preservation of affordable multifamily housing, wherever such housing is located. Indeed, incentivizing the preservation of housing in all areas will allow TDHCA to promote housing choice by:

- Catalyzing investment and development in distressed neighborhoods serving racial minorities;
- Improving living conditions and enabling households who choose to stay in their neighborhoods to do so;
- Maintaining and improving housing in gentrifying communities.

The Trust urges TDHCA to balance point incentives for investing in high opportunity areas and the preservation and rehabilitation of existing multifamily housing in a way that makes sense for Texas.

The Trust also encourages TDHCA to partner with Texas' utilities to make energy-efficiency programs more accessible to affordable, multifamily developments. A majority of states implement utility-funded energy efficiency programs, often paid for through charges included in customer utility rates. These programs are a significant and growing source of resources for residential energy retrofits that remain largely untapped by the multifamily sector. Utility energy efficiency program budgets have significantly increased since 2006 and could reach **$12 billion** nationwide by 2020. Reaching under-served markets, such as affordable multifamily housing, will be necessary if utilities are to achieve higher spending and energy saving goals. In several states, utilities are partnering with state housing agencies and affordable housing owners to develop successful multi-family energy efficiency retrofit programs for multifamily properties. **Energy efficiency upgrades in affordable rental housing are a cost-effective approach to lower operating expenses, maintain affordability for low-income households, reduce carbon emissions, and create healthier, more comfortable living environments for low-income families.**

Conclusion

As you consider these recommendations, you can explore how other states are approaching each of these issues in their Qualified Allocation Plans by searching PrezCat (www.prezcat.org), an online catalog of state and local affordable housing preservation policies. We would be happy to work with you to flesh out some of these ideas, and identify options that work best for the preservation of affordable housing in Texas.

It is important for housing choice that TDHCA maintains a balanced allocation of Housing Credits. In addition to helping to build sustainable communities, preservation is significantly more cost-efficient and environmentally friendly than new construction. The National Housing Trust urges the Texas Department of Housing and Community Affairs to continue its support for sustainable communities and the preservation of Texas' existing affordable housing by maintaining the set-aside for "at-risk" properties and balancing incentives for opportunity areas and preservation in the final 2016 QAP.

Thank you for the opportunity to comment on this important issue in the State of Texas.

Sincerely,

Michael Bodaken
President

(39) Darrell Jack

From: Darrell G Jack
To: Teresa.Morales tdhca.state.tx.us
Subject: QAP Comments - 2
Date: Thursday, October 15, 2015 5:29:37 PM

Teresa:

The following are my personal comments related to the proposed rule changes for the 2016 QAP, M/F Rules and Real Estate Analysis Rules.

The proposed QAP Rules further concentrate affordable projects in the same small areas that achieve the highest number of scoring points, by giving points to projects within 1 mile (2 miles - Rural) of a grocery store and pharmacy. These points have even more affect in rural areas where a large number of cities are located within a 3rd or 4th quartile census tract, surrounded by first and/or second quartile census tracts on the outskirts of town.

Being located within 1 mile (2 miles - Rural) of a grocery store and pharmacy, have little to no affect on the demand for housing. By example, according to public records, only 2 of the 6 TDHCA Board members have homes that would qualify for these proximity points.

I recommend that for rural areas, the points/requirements for sites to be located within a 1st and 2nd quartile census tract, and points for proximity to a grocery store and pharmacy, be eliminated from the QAP.

Thank you for considering my comments.

Darrell G Jack
President
Apartment MarketData, LLC

(40) Madhouse Development Services

Teresa,

Thank you for giving us the opportunity to comment on the 2016 QAP & Multifamily Rules. Please find out comments below.

Underserved Area:

We respectfully request items (F) & (G) be removed from the current QAP. While we agree targeting areas with new employment centers and exceptional growth make sense we feel without a clearly defined data source this could create a "free for all" within the development community. We suggest pulling these items from the current draft and fully vetting them over the next year for inclusion in the 2017 QAP.

As you are aware the scoring of applications tends to be pretty flat. The Underserved Area is typically one of the few distinguishing point items remaining in the QAP. Should you decide to leave items (F) & (G) in the current QAP we request you increase the maximum possible points to four (4). By doing this, areas that were truly underserved, say a Place that has never had a deal that also has a new employment center & has experience exceptional growth could receive the max points.

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www.madhousedevelopment.net

(41) Judy Telge, Coastal Bend Center for Independent Living

From:	Spencer Duran
To:	Teresa.Morales tdhca.state.tx.us
Cc:	Megan.sylvester tdhca.state.tx.us; Brooke.boston tdhca.state.tx.us
Subject:	FW: Pubic Comment on TDHCA QAP
Date:	Thursday, October 15, 2015 6:28:23 PM

-----Original Message-----
From: Atlee McCampbell [mailto:atleem@cbcil.org]
Sent: Thu 10/15/2015 4:10 PM
To: Spencer Duran
Cc: Judy Telge; Linda Fallwell-Stover; viola@cbcogaaa.org
Subject: Pubic Comment on TDHCA QAP

Mr. Duran,

The purpose of this email is to provide public comment on TDHCA's Qualified Allocation Plan. Corpus Christi has an extremely high unmet need for affordable, accessible, integrated rental housing for people with disabilities and others below 30% AMI. Coastal Bend Center for Independent Living and other partners through Aging Disability Resource Center (ADRC), Housing and Services Partnership that includes CBCIL, Area Agency on Aging, Behavioral Health Center, Corpus Christi Housing Authority, Accessible Housing Resources Inc., and others join in requesting TDHCA HUD-811 Tax Credit Initiative to be brought to Corpus Christi. By having this resource our community will be better able to address the availability of adequate subsidized rental housing for individuals on SSI who are unable to relocate from institutions, and people who are homeless or at risk of homelessness.

Thank you for the consideration,

Judy Telge

(42) Motivation Education & Training, et al.

Motivation Education & Training, Inc.
Guadalupe Economic Services Corporation
Housing Authority of the County of Hidalgo
Tierra del Sol Housing Development Corporation
Thomas Andrews, Thomas Development Group

October 15, 2015

Ms. Theresa Morales
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711-3941

RE: Comments related to the *Housing Tax Credit Program 2016 LIHTC plan and rules*
Delivered electronically via email 10/15/15 to Teresa.Morales@tdhca.state.tx.us

Dear Ms. Morales:
We appreciate TDHCA's willingness to include farmworker housing in the QAP by allowing new construction to compete in the USDA set-aside when receiving USDA Section 514 funding. Because the 514 funding often comes with federal Rental Assistance, it will allow additional federal funds to flow to Texas in addition to sorely needed Rental Assistance, making rents affordable to very low income farmworkers, all below 60% MFI, and reaching many at 30% MFI. In the future the tax credit set-aside should increase to meet the demand for additional federal funding to be brought to the state through the Section 514 program, in addition to continue to fund vital preservation of existing rural units.

Texas' agricultural industry has a huge economic impact on the state, one of the largest in the nation. Yet in the history of Texas' Low Income Housing Tax Credit program, only $714,294 has benefited Texas' farmworkers. The 36 units in San Elizario, El Paso County, that form the Presidio Delores Apartments pay tribute to the success of attracting federal funds into Texas, including vital Rental Assistance, and supplementing them with tax credit equity. The fact that in the long history of Texas these units are the only ones, pay tribute to the need to provide a scoring advantage for these projects.

Allowing a scoring advantage for Section 514 with Rental Assistance would allow Section 514s to better compete outside of the USDA set-aside. Hopefully the inclusion in an inaugural year will help demonstrate the advantages of bringing additional farmworker units and federal funding to the state. Indeed other states (California, Washington, Oregon) incorporate scoring and set-asides that give an advantage to farmworker housing. In Washington for example, 35 points are added for farmworker-designated housing.

There are several very important reasons for prioritizing farmworker housing with scoring advantages.

1. Stabilize ag economy and ag workers in Texas with housing
   The valuable agricultural economy is sustained by having affordable housing to stabilize the workforce. The economic impact in Texas of the agricultural food and fiber sector totals *more than $100 billion each year*, and one of every seven working Texans is in an ag-related job. Texas leads the nation in number of cattle, the production of sheep and goat products, the number of farms and acreage in farms. It is a large producer of watermelon, grapefruit, and cantaloupes, various vegetables, and as always, cotton is still king.

   Presidio Delores, Vista Rita Blanca (in Dalhart TX), Memorial (McAllen), Northside (Weslaco), and other farmworker housing in Texas play an important role to strengthen and encourage

vegetable and fruit production, dairies, cheese plants, cattle operations, and other food production in Texas. It is a unique opportunity for TDHCA to induce more positive economic results through stabilizing housing for the agricultural workers. It helps connect the dots between housing and economic stimulus and provides a practical pathway to solutions for the economy of rural communities. It provides positive results achieved when housing is matched with the employers activities.

2. Bring more Rental Assistance and federal dollars to Texas
   Section 514 comes with Rental Assistance (which, like Section 8, subsidizes the portion of monthly rents beyond what tenants can afford to pay). How can we allow this limited federal funding to go to other states instead of Texas, the state with the second largest number of farmworkers in the nation?

3. Rental Assistance synergizes LIHTC and allows LIHTC units to reach 30% MFI
   Most importantly, without Rental Assistance, farmworkers do not qualify to live in LIHTC because their earnings are usually too low to afford the rents. The QAP gives additional points when tenants below 30% are served, and Section 514 would allow for more than the typical five units in a project to serve this population. Thus, the Section 514 brings this subsidy source to the state and increases the number of very low income tenants reached by the Low Income Housing Tax Credits – Rental Assistance synergizes LIHTCs!

4. Rental Assistance is lost with natural mortgage pay-offs when it should be a preservation tool
   In addition to new construction and new Rental Assistance, there is a serious need among the existing 1,119 units of Section 514/516 for preservation. A set-aside should be established for units that already have Rental Assistance to receive funding for rehabilitation. Not only will the preservation of units be realized, it will also preserve this scarce and precious funding source and prevent its redistribution to other states.

5. Rental Assistance makes LIHTC units accessible to farmworkers
   Because developments that offer affordable housing to farmworkers target working households with very meager earnings (i.e. 30-60% MFI), developments using Section 514 serving farmworkers should receive a higher point score (we suggest eight points). Nationally farmworkers household incomes are between $7,500 and $10,000. MET clients (averaging 4-person households) earn an average annual wage equal to 38% of the poverty rate. Nationally 60 percent of all US farmworkers live below the poverty level and the poverty rate for these workers exceeds that of all other general occupation categories. Median weekly earnings of full-time farmworkers are 59% of those for all wage and salary workers, although work-weeks usually are upwards of 50 hours a week.

Please also remember that TDHCA's own study in 2012 stated that 92.7% of farmworkers are not served by the 28 farmworker-designated projects in the 49 rural counties studied in the report. In the 11,948 units in 290 affordable housing projects within the regions studied, high occupancy rates mean that few farmworkers will successfully compete for these units (including LIHTC units). The study concluded with recommendations, some of which were connected to the LIHTC program. We encourage TDHCA to consider these recommendations in the development of the QAP.

Finally, we have serious concerns about eight scoring points afforded the state representative's support. Fair housing impediments and isolation of important constituents will result in cases where the state representative refuses to support housing for farmworkers. These points should be eliminated or given other opportunity to cure so that housing is not denied for important constituents.

Together we represent

- the builders and managers of more than half the farmworker units in operation in Texas;
- those responsible for the development of the five most recently built Section 514 facilities in the state, indeed all the facilities built in the state since 1990;
- owner and manager of the oldest units still in operation in Texas.

Each of our entities, with the exception of our development consultant, are nonprofit organizations.
We appreciate the chance to comment.

Sincerely,

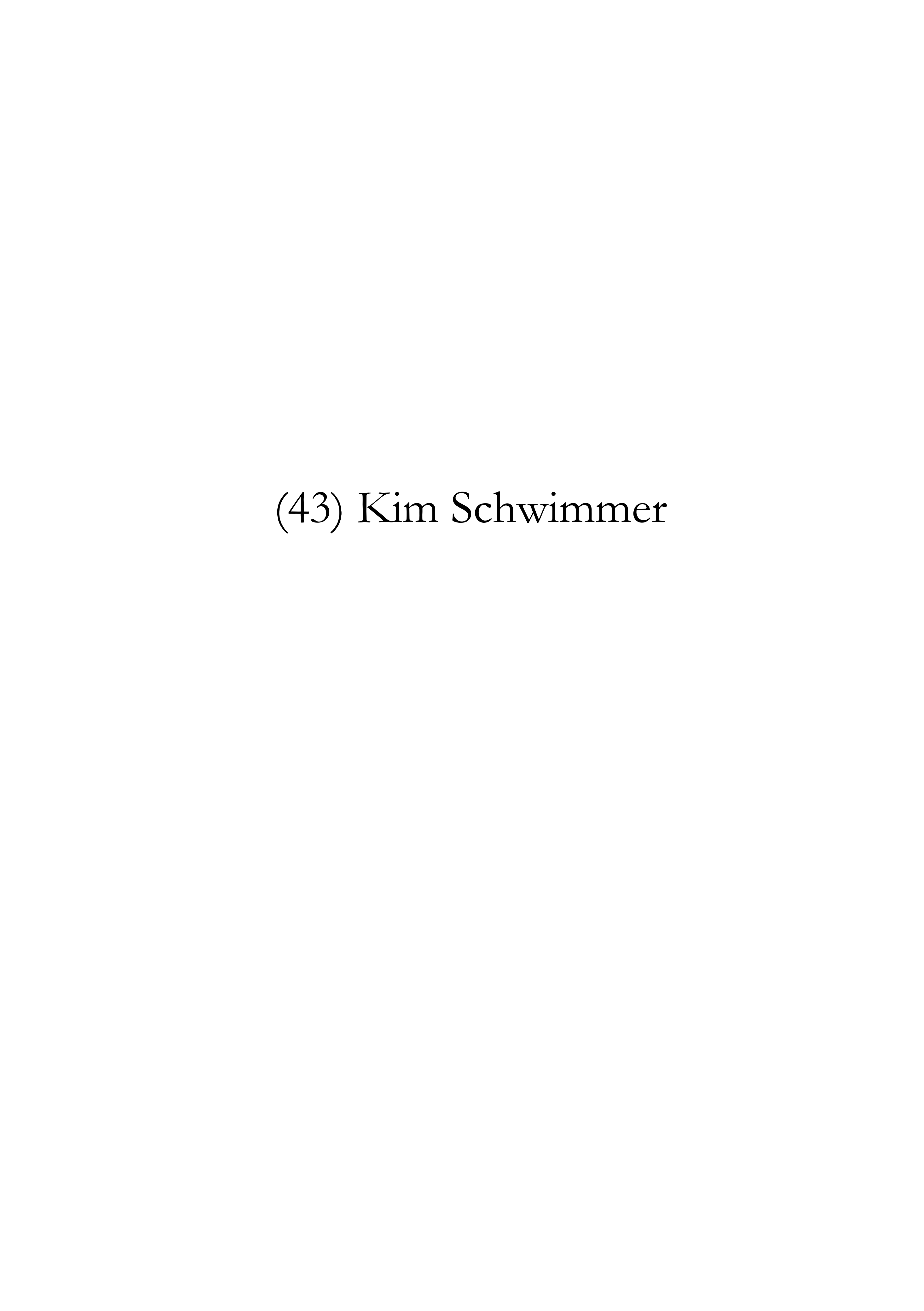
Kathy Tyler
Motivation Education & Training, Inc.

Rose Garcia
Tierra del Sol Housing Development Corporation

Diana Lopez
Guadalupe Economic Services Corporation

Thomas Andrews
Thomas Development Group

Mike Lopez
Housing Authority of the County of Hidalgo



(43) Kim Schwimmer

From: Kim Schwimmer
To: teresa.morales tdhca.state.tx.us
Subject: HTC Program Scoring Criteria for 2016
Date: Thursday, October 15, 2015 9:15:20 AM

Ms. Morales:

As a Texas land broker currently working with several developers who are participating in the Competitive Multifamily 9% HTC program and the PAB bond/4% HTC program, I am actively seeking sites for the development of affordable multifamily housing in Texas. I cover a wide area, but focus primarily on Region 3 Urban.

It is my professional opinion that the radius of 1 mile for proximity to a full service grocery and pharmacy (1 point each) needs to be expanded for the 2016 QAP/Multifamily Rules. I am recommending that the radius be expanded to 1.5 miles. I understand that the recommendation has been made to extend the radius for 3 miles in Rural areas. I feel that Urban areas pose far more challenges to find available and affordable MF tracts that are close to major retail outlets such as a Walmart, HEB Plus or other sources of full service grocery and pharmacy outlets. Land costs have escalated in proximity to those types of retail centers, and suitable tracts of land are typically not zoned for MF use, may not be large enough to support a development and usually require lengthy and costly rezoning close to neighboring subdivisions where opposition to affordable MF is gaining momentum and can kill a project. The 1 mile radius does not allow for access by most projects located in master planned communities to these services and often, these areas provide the best opportunities to locate affordable MF housing in a growing, Urban community.

I am requesting that TDHCA extend the radius of proximity to grocery and pharmacy services to 1.5 miles, to address these issues for Urban projects, just as it is considering extending the radius to 3 miles for Rural projects.

I am also requesting that churches remain in the list of mandatory Community Assets as they play a significant role in the social, economic and spiritual well-being of residents.

Thank you for your consideration. Please see my suggested changes below.

Qualified Allocation Plan Proposed Changes:

Section 11.9 (c)(9) Competitive HTC Selection Criteria/Proximity to Important Services

I request the following substitution to this section:

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius for Urban Developments and (three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.

(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

This is a substitution for the following text:

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one mile radius (two mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.

(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

Subchapter B-Section 10.101 (a)(2)(c) Mandatory Community Assets
I request that the church be reinstated as a Mandatory Community Asset.

Thank you,

Sincerely,

****
Kim Schwimmer
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445 East FM 1382
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Kimschwimmer@rksgrouprealestate.com
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(44) Christopher Myers

From: christopher buyersmyers.com
To: teresa.morales tdhca.state.tx.us
Subject: PLEASE HELP AMERICA TEXAS!
Date: Thursday, October 15, 2015 4:24:34 PM

Dear Ms. Morales,

This is upside down given our domestic situation to spur on the economy. Be proactive and look towards the future, please. There ought to be incentives all across our fine Country, (regardless of rural &/or heavily populated ares/rich or poor), and to limit those that can create jobs is absolutely UN-American. Who cares whether it's 1 mile or 5? Who walks nowadays further than 1/4 mile? The thought is preposterous. Making developers hire a certain % of future employees within these areas makes more sense for the Our Country to create jobs rather than limit them. These incentives ought to be flying off the shelves.

If realtors, developers, investors, et. al. are coming to the table to help the general public for housing and jobs, then what AMERICAN in their right mind would be against that?

Someone is making the money and deleting jobs and it's not the thousands of us hard working front line folks. Just a thought. I would love to hear a response.

I am a licensed real estate agent in Region 6 who has been working with a number of MF developers to help them locate land that is suitable for projects to be developed through the Competitive Multifamily 9% HTC Program and the PAB bond/4% HTC Program for 2016. I am writing to provide Public Comments to the proposed 2016 QAP and Multifamily Rules.

I have been advised that the proposed 2016 QAP and Multifamily Rules will require a full service grocery and pharmacy to be within a 1 mile radius for a project to score 2 points (1 point for each mandatory service) as part of the competitive scoring process.

I am requesting that this radius be extended to 1.5 miles. I understand that Rural projects are having their required scoring radius extended from 2 to 3 miles and I feel that Urban projects have a much more difficult time locating these services within a 1 mile radius, which should be extended to a minimum of 1.5 miles this year.

There are generally too many competing retail and commerical land uses within a 1 mile radius of full service grocery and pharmacy services, for MF developers to find affordable land that is large enough to support a MF project. This is becoming a real problem in many areas in Region 6. Furthermore, many communities and Harris County Commissioners oppose affordable MF housing which is being proposed in a tight radius around 1 or 2 high performing elementary schools. Often, any sites that are within 1 mile of these particular services force development that is going to be opposed and ultimately defeated, due to the associated impact on one or two school attendance zones.

I believe by extending the Urban radius for these two services to 1.5 miles, land will be less expensive and there will be less opportunity for opposition to new and affordable MF housing which is badly needed in this area. Since a similar change is being proposed for Rural areas to expand the radius from 2 to 3 miles, I am making a request to expand the Urban radius for these two services from 1 to 1.5 miles.

Please see my suggestions for changes to the QAP/Multifamily Rules for 2016 below:

Qualified Allocation Plan

Section 11.9 (c)(9) Competitive HTC Selection Criteria/Proximity to Important Services

Please make the following substitution to this section:" Making developers hire a certain % of future employees within these areas makes more sense for the Our Country to create jobs rather than limit them. These incentives ought to be flying off the shelves."

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius for Urban Area Developments and three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.
(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

This is a substitution for the following text:
Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one mile radius (two mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.
(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

Subchapter B-Section 10.101 (a)(2)(c) Mandatory Community Assets
I am requesting that Churches be retained as a Mandatory Community Asset. They offer far more community support to residents than such items as a civic club and often provide daycare, counseling and other important services which affect the residents' quality of life and economic stability.

Thank you for your consideration of my Public Comments and suggestions. I strongly urgeTDHCA to adopt this change for 2016.

Sincerely,

Christopher Myers
Realtor, CNE
713-446-1100 - Cell
936-398-6900 - EFAX

www.buyersmyers.com

Realty Associates
Coldspring, Texas 77331

(45) Pedcor Investments

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin Texas 78701

Re: Comment on the 2016 Staff Draft of the Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules ("Rules")

Dear Mr. Irvine,

As experienced developers and owners of tax credit properties across the country and more recently in Texas, Pedcor Investments would like to submit comment on the Texas Department of Housing and Community Affairs ("Department") staff draft of the 2016 QAP and Rules. We would first like to thank you and your staff for the tremendous amount of work that has gone into this process. Although they may seem lengthy, these comments are made in the spirit of offering ideas to improve the QAP and Rules and not in any way as a criticism of staff's efforts. We appreciate your consideration of the following, which are listed in the order in which they appear in the Rules and QAP.

Section 10.101(a)(2), related to Mandatory Community Services and Other Assets

Staff's initial draft included a requirement that all proposed New Construction developments be located within three miles of a full service grocery store, pharmacy, and urgent care facility. While we agree with the removal of this provision as a threshold item, we do think it is appropriate to single out certain amenities as being more important to the tenants of the proposed developments than others. We agree that proximity to a grocery store is essential to everyone on an almost daily basis, while proximity to a county courthouse should perhaps not carry the same weight with respect to determining eligibility. However, we do not agree with the concept of making proximity to these assets a scoring item (and will provide similar comment under that particular item). While this is not meant to be commentary on whether or not the Department is subject to the Remedial Plan, we would point out that the Remedial Plan does call for staff to remove all "development location incentive criteria" (outside of the Opportunity Index, Educational Excellence, and those otherwise mandated by statute or federal law) from the QAP. We believe adding this location specific incentive could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index. However, in order to incorporate the importance of proximity to certain assets over others, we propose the following:

(2) **Mandatory Community Assets.**

(A) Development Sites must be located within an appropriate distance of community assets as described in subparagraph (B) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) – (iii) of this subparagraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active

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construction, post pad (e.g. framing the structure) by the date the Application is submitted.

(i) New Construction in an Urban Area must qualify for eight (8) points
(ii) New Construction in a Rural Area must qualify for six (6) points
(iii) Rehabilitation Development (in either Urban or Rural areas) must qualify for five (5) points

(B) The community assets and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population or in an Urban or Rural Area.

(i) within one mile of full service grocery store (3 points);
(ii) within two miles of a full service grocery store (2 points);
(iii) for Applications proposing to serve the General Population, within three miles of a full service grocery store (1 point);
(iv) within one mile of a pharmacy (3 points);
(v) within two miles of a pharmacy (2 points);
(vi) within three miles of a pharmacy (1 point);
(vii) within one mile of an urgent care facility (3 points);
(viii) within two miles of an urgent care facility (2 points);
(ix) within three miles of an urgent care facility (1 point);
(x) for Applications in a Rural Area, within two miles of a public school (1 point);
(xi) for Applications proposing to serve the General Population, within ½ mile of a public school (2 points);
(xii) within one mile of a public school (1 point);
(xiii) for Applications proposing to be an Elderly Development, within one mile of a senior center accessible to the general public (2 points);
(xiv) within ½ mile of a designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation does not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify (1 point);
(xv) For Applications in an Urban Area, within one mile, and for Applications in a Rural Area, within two miles of any of the community assets listed in subclauses (I) – (XIV) of this clause (1 point):

(I) convenience store/mini-market;
(II) department or retail merchandise store;
(III) bank/credit union;
(IV) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);
(V) indoor public recreation facilities, such as, community centers and libraries accessible to the general public;
(VI) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;
(VII) medical office (physician, dentistry, optometry) or hospital/medical clinic;
(VIII) religious institutions;
(IX) community, civic or service organizations, such as Kiwanis or Rotary Club;
(X) post office;
(XI) city hall;

(XII) county courthouse;
(XIII) fire station; or
(XIV) police station

<u>Section 10.101(a)(5)(B), related to Common Amenities</u>

The 2016 draft states that, "In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase." We believe that if tenants in a second phase of a development are able to enjoy the benefits of an amenity that has been built in the first phase that the amenity should count for points in the second phase. If the reason behind the rule is a concern over eligible basis, we believe that issue can be resolved at cost certification. We understand this rule to be in place to ensure that amenities are provided for the tenants' use, regardless of when that amenity was built. Further, we believe that building an additional amenity in some cases is an inefficient use of federal resources. We propose the following:

"…Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development ~~cannot~~ can be claimed for purposes of meeting this requirement for the second phase, as long as that the amenity still meets any requirements with respect to its size or, where appropriate, the number of amenities required per unit. ~~The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development.~~ All amenities must be accessible and must be available to all units via an accessible route."

<u>Section 10.204(14), related to Required Documentation for Application Submission</u>

We propose that this section of the rule be removed. While we believe it is appropriate for Applicants to provide evidence that a property tax exemption can be reasonably expected, attorneys may be reluctant to make the statement required by the proposed rule. While the law regarding property tax exemptions might be very clear, attorneys' hesitancy with respect to providing these letters is understandable since, in a very practical sense, it is the appraisal districts with the ultimate authority. In addition, this only adds cost to the application process. If this provision is ultimately included in the rule we suggest that it be moved to Subchapter D as an item that may be requested by the Real Estate Analysis Division, so that this cost is only borne if the Application is underwritten. Alternatively, we suggest it be included only as a condition of Commitment.

<u>Section 10.205(5), related to Site Design and Feasibility Report</u>

We do not suggest any changes to this section, only that staff consider moving it to §10.204 of the Rules so that it is not subject to the same scrutiny as other Third Party Reports, particularly with respect to their being required to be submitted "in their entirety" or have the corresponding Application be terminated. Unlike the Market Analysis, Environmental Site Assessment, and other Third Party Reports which are truly commissioned to be completed entirely by third party professionals, this report can actually be compiled by the Applicant from more than one service provider. In addition, some aspects of this report

may very well be included in other parts of the Application. We believe that this report should be subject to the provisions included in §10.201(7), related to the Administrative Deficiency Process (including the provision of the rule regarding "matters of a material nature not susceptible to being resolved") instead of the provision included in the introductory paragraph for Third Party Reports.

Section 10.207(b), related to Waiver of Rules for Applications

We believe this rule is unclear with respect to the authority of the Executive Director to grant any waivers. The rule indicates that the Executive Director may waive requirements "as provided in this rule," which we understand has been interpreted to mean that, unless a section of the rule actually speaks to a waiver of that particular rule, that the Executive Director does not have the authority to entertain a waiver of that rule. While we contend that the Executive Director could have such authority, we do not necessarily disagree with that interpretation of the current language. However, the only place in the rule that specifically mentions such authority to grant a waiver is in the introductory paragraph to the fee section, §10.901 of the Rules. Section 11.6(5), related to Credits Returned Resulting from Force Majeure Events, specifically states that waivers will not be accepted, but that is the only other place in the QAP or Rules that waivers are mentioned. Because this section (§10.207) alludes to a process by which an Applicant could appeal the denial of a waiver request by the Executive Director, it implies that such waiver requests would actually be entertained. If waiver requests will not be entertained by the Executive Director, we suggest removing the provision so as to speed up the process by which waiver request would actually be presented to the Board. However, if the Executive Director will entertain the requests, we suggest the following:

"…The Executive Director may consider requests to waive requirements of those provisions of this rule listed in subsection (a) of this section.~~ as provided in this rule~~. Even if this section of the rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action…"

Section 11.3(e), related to Additional Phase

We previously submitted comment with respect to this rule in a letter dated August 17, 2015, which was included as backup documentation to the initial staff draft presented to the Board on September 3, 2015. In addition, we made an oral presentation at the September 11, 2015 Board meeting regarding this matter. We stand by our previous comment and hold that this provision of the rule unnecessarily delays putting affordable units on the ground at otherwise eligible sites. We contend that any evaluation of a proposed site is going to somehow include adjacent sites – as well as those that are 500 or 5,000 feet away. For example, those (possibly adjacent) sites will be factors when evaluating other statutorily mandated de-concentration factors, undesirable neighborhood characteristics, and feasibility with respect to demand. While we previously suggested alternate language in order to address what we thought may be concerns of staff, our preference is that the section be deleted in its entirety.

Section 11.4(b), related to Maximum Request Limit

We believe that clarification is needed regarding request limits for Elderly Developments located in sub-regions where there is a maximum amount of credit available to Elderly Developments. We believe that those requests should be treated the same as those requests made that might exceed the overall limit and suggest the following language:

"…For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000,

whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published in the Site Demographic Characteristics Report after the release of the Internal Revenue Service ("IRS") notice regarding the 2016 credit ceiling. For all Applications, ~~T~~the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded…"

(We are assuming here and in comment below on the same subject, that an estimate would be released in December when the other Regional Allocation Formula estimates are released such as the maximum funding request allowable to achieve points under §11.9(f)(8), and that a final amount would be released in early 2016, when the IRS releases the formal notice regarding credit available based on population. If that is not the case we request that it be clarified in the rule or elsewhere.)

Section 11.4(c)(2), related to Increase in Eligible Basis (30 Percent Boost)

We would like to express our support for the addition of the language related to Small Area Difficult Development Areas.

Section 11.6(3), related to Award Recommendation Methodology

We request some clarification with respect to the calculation of the maximum percentage of credits available for Elderly Developments, particularly as it relates to returned credits. For instance, if there is $6 million in credit available in a particular sub-region, and data suggests that 25% of the credit should be available for applications proposing to serve an elderly population (because the difference between the number of affordable age-restricted units and the number of eligible elderly households is only 25% of that same difference for the entire population in the sub-region), then $1.5 million is available to elderly applications. This comment is based on the assumption that staff will consider all awarded (but not placed in service) applications to date when performing this initial calculation. If credit is returned from an application awarded in a previous cycle, we believe the amount of credits available to elderly applications (that $1.5 million) should not be adjusted and that the credit returned should not be considered in any subsequent calculations. First, this will provide certainty to the award methodology process. Second, if the returned credit were to be considered, not only would the ultimate amount of credit available for elderly applications need to be recalculated, but the percentage itself would also need to be recalculated since the return could actually impact the calculation by changing the number of existing housing tax credit units in the sub-region. (For example, a $750k return on an 80-unit general population development might yield data that suggest only 22% of the now $6,750,000, or $1,485,000, would be available to elderly developments. A return that also resulted in fewer elderly units would yield a different calculation.) We believe the possibility of never-ending recalculation based on returns could cause confusion and invites errors in the calculation, and that a maximum that is fixed at the beginning of the cycle will ensure transparency and compliance with statute.

Assuming that staff will release a final figure available to elderly application in January and that staff will consider awarded (but not placed in service) applications as "existing" developments, we suggest the following additional language in order to clarify how the percentage will be calculated upon a return of credit.

"…In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum ~~percentage~~ amount of credit~~s~~ available for Elderly Developments, unless there are no other qualified Applications in the sub-region. This includes any Applications awarded under subparagraph (B) of this paragraph. The Department will, for each such

Urban sub-region, calculate the maximum ~~percentage~~ amount available for Elderly Developments in accordance with Texas Government Code, §2306.6711(h). These ~~calculations~~ maximum amounts will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)) and will be final, regardless of any returned credit from previous cycles, but may be exceeded only if necessary to comply with the nonprofit set-aside required by §42(h)(5) of the Code."

Section 11.7, related to Tie Breaker Factors

We disagree with the idea that a very specific piece of data regarding a site (school score, poverty rate) that is already incorporated into another scoring and then again into the first tie breaker factor should be given even more weight. We believe that it would be more appropriate to include other criteria (outside those related to the Opportunity Index, which is considered a criteria that supports Texans most in need). The QAP lists three other categories: those promoting high quality housing, community support and engagement, and an efficient use of resources. We believe it would be more appropriate to include a criteria related to one of these other categories as a tie breaker factor. Further, the QAP also includes an entire section on de-concentration factors, and the Rules contain an entire section related to community assets. We believe that either of these factors would be appropriate as well. We first suggest deleting entirely the tie breaker factors related to poverty rate and school ratings. Secondly, we suggest the following language regarding the last tie breaker factor:

"...Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population..."

Finally, should staff choose to include additional factor(s) we suggest the following options, listed in the order by which we find them most appropriate:

1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
2) Applicants with a portfolio that has a compliance history in the lowest category as determined in accordance with 10 TAC §1.301, related to Previous Participation;
3) Applications eligible for the highest number of points under §10.101(a)(2), relating to Mandatory Community Assets;
4) Applications in census tracts with the lowest percentage of Housing Tax Credit Units per household;
5) Applications with the highest combined scores for Local Government Support, Commitment of Development Funding by Local Political Subdivision, Declared Disaster Area, Quantifiable Community Participation, Community Support from State Representative, Input from Community Organizations, and Concerted Revitalization Plan under subsection §11.9(d) of this chapter (relating to Competitive HTC Selection Criteria);
6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population

Section 11.9(2)(A), related to Sponsor Characteristics

We suggest that the threshold for the HUB or nonprofit partner participation be lowered to a combination of ownership interest, cash flow from operations, and developer fee taken together to equal at least 50 percent with no less than 5 percent in each category. While there are some HUBs and nonprofit organizations that have extensive experience, part of the purpose of the scoring item is to give more experience to organizations that have some but that still need partners. We believe that those with more experience will be able to successfully negotiate more interest but that a combined 50 percent is fair for those HUBs and nonprofit organizations that are using the partnership to gain additional experience.

Section 11.9(b)(2)(B), related to Previous Participation Compliance History

We support this concept in general and believe that it could be given even more weight, up to 4 points. The performance of the developers and owners that participate in this program is paramount to its success. As difficult as it is to assemble a competitive tax credit application, it is infinitely more difficult to see the commitments made in that application come to fruition. Likewise, it is meaningless to develop and own a Housing Tax Credit assisted Development and then operate it in a manner that does not adequately serve Texans in need of the housing. The only developers/owners who object to this type of scoring item are those with poor compliance histories. We appreciate that this concept has been considered in the past and has not been written into the rule, but we contend that the current Previous Participation rule takes into consideration all of the previous concerns surrounding this item. It does not penalize out-of-state developers; it takes into consideration portfolio size; it does not penalize owners for having findings but only for not correcting those findings timely; and it is generally concise and easy to understand.

We do think there are a number of ways that this scoring item could be drafted, although we reiterate the importance of it simply being included in any format. If there is a desire to revise the current draft, we would also support a scoring item that awarded 2-4 points for those Applicants with a Category 1 portfolio and 1-2 points for those with a Category 2 portfolio. We would also support a scoring penalty (negative 1 or 2 points) for those with a Category 3 or 4 portfolio, only because we see this as having the same impact. In addition, we would support a scoring item that took into account the compliance history of only the majority owner of the general partnership interest, so that owners with good compliance histories would still be motivated to partner with a non-profit or HUB that might have had some compliance issues in the past. The point is that compliance history remain a factor in determining whether or not an Applicant should receive an award of housing tax credits.

Sections 11.9(c)(2) and (3), related to Rent Levels of Tenants and Tenant Services

We believe that the additional points available to Supportive Housing Developments under these two scoring items should be removed. Supportive Housing Developments are by definition developments that have a number of funding sources that do not constitute permanent debt. Also by definition, it is expected that those sources will require that the property serve particular populations, which may translate into those developments having additional units restricted at 30% AMI rents and/or provide additional services. We do not believe that meeting the requirements of outside funding sources should necessarily garner additional points on a housing tax credit application. The benefits of serving those populations are realized through the other funding source(s). In addition, Supportive Housing Developments are already afforded a number of other concessions in the Rules, including numerous underwriting considerations (including the ability to have owner contributions not counted as deferred fee); exemptions from otherwise required development amenities, minimum unit sizes, and unit and development features; and in the current draft additional consideration with respect to scoring points under Cost of Development per Square Foot. At minimum we suggest that only the highest scoring Supportive Housing development in any given region have access to these additional points. Otherwise, the QAP as currently written highly favors this type of development over developments that serve the general population or the elderly. It is our understanding that developers of Supportive Housing are seeking additional concessions not only in the QAP and Rules but also in the Direct Loan NOFAs that are currently being developed. We point out that, while it is may be possible to compile different parts of statute in a manner that implies that providing this very particular type of housing is a primary purpose of the Department, we could not find it explicitly stated. We appreciate that some local governments have taken it upon themselves to incentivize supportive housing and believe that those incentives should remain with those local governments and not with the state, at least not to the detriment of other types of affordable housing providers.

Section 11.9(c)(4)(A), related to Opportunity Index in an Urban Area

We are generally opposed to the use of distinction designations by the Texas Education Agency ("TEA") to determine whether or not a school is considered high performing because of the methodology behind those distinctions. The TEA manual indicates that these are determined after schools are put in "comparison groups" with schools across the state, and these groups can vary greatly in size. We do not think this is an accurate reflection of a school's general performance, as the "worst of the best" might earn a distinction while the "best of the worst" might not. In order to achieve a Met Standard rating and therefore be eligible for a distinction designation, a school only needs to meet targets on three indexes; therefore, it is not difficult to find schools that have very low scores on the performance index report (one school achieved only 61, 24, 33, and 13, respectively, as a specific example) and still achieve a distinction designation. Even though the current draft calls for the school to also achieve a 77 on the index 1 score, we still find this inappropriate as a determinative factor. The Opportunity Index is appropriately designed to compare one part of an MSA to another, not to compare a census tract in Spring to one in McAllen. Using distinction designations violates that concept. If staff thinks it is appropriate to insert a 6-point scoring item into the Opportunity Index, we suggest that they do so by introducing a new factor or simply compressing the scoring, not by arbitrarily adjusting the thresholds for either income, poverty rate, or school ratings. For instance, because proximity to community assets has been presented as a priority by staff, it could be included in the Opportunity Index without undermining the policy objective of the index itself. We suggest one of the following possibilities:

"...(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (~~5~~6 points);

(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (~~5~~4 points); or

(iv) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (~~1~~2 points)."

Or:

"...i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1

of the performance index, related to student achievement, and is within three miles of a full service grocery store, pharmacy, and urgent care facility (~~5~~6 points);…"

Section 11.9(c)(4)(B), related to Opportunity Index in a Rural Area

We would like clarification with respect to Development Sites in districts with "choice" programs. The current draft indicates that in the case of a site in a district with a "choice" program that the closest school, regardless of distance to the Development Site, must have an index 1 score of 77 in order to achieve one point under clause (i). Although we do not necessarily object, this does not seem consistent with the concept of the rural opportunity index, which in general requires first one threshold that does not involve proximity to services or community assets and then a second criteria which does require such proximity. Instead it seems redundant considering the first "threshold" requirement for points. We would suggest that either the requirement for the point be proximity to the elementary school or in the attendance zone of a highly rated middle or high school.

In addition, we disagree with the concept of elderly developments having access to points for being in proximity to "services specific to a senior population" as well as being in proximity to a senior center. We suggest deleting one or the other.

Section 11.9(c)(4)(C), related to Opportunity Index

We believe the Department needs to address the issue of "choice" programs and that the deletion of the sentence that previously addressed this situation is problematic. We believe that in districts with these programs the district rating should be used. We object to the idea of using only the rating of the closest school to the Development Site when evaluating schools that are part of a "choice" program. True "choice" programs do not just allow students to choose to attend a school outside of a designated attendance zone; students are required to make these choices. Because there is truly no "default" school, we believe it is inappropriate to assume that the closest school is the one that the students will most likely attend. It is very possible that a school that is closer might be across a major highway and not be the logical choice at all, with respect to either school rating or transportation. Therefore we suggest the following:

"…In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating…"

Section 11.9(c)(5), related to Educational Excellence

First, we reiterate our comment above with respect to choice programs. In addition, we believe that using the district rating in cases with district-wide enrollment is more appropriate than using the rating of the nearest school since there is no guarantee that the tenants will attend the nearest school.

More importantly, we object to the concept of awarding 3 points to applications proposing Development Sites in attendance zones of schools that only have a Met Standard rating. We do not believe this is in keeping with the idea of educational excellence and would severely dilute the impact of this scoring item. It should be noted that the initial staff draft included a threshold item with respect to being in attendance zones of schools with a Met Standard rating. While we appreciate staff's decision to remove that threshold item, we also recognize that staff's position was that locating developments in the attendance zones of schools that are at least performing at a satisfactory level is something that all applicants should be striving to accomplish. Although we are not proposing such language here, we believe that, in response to staff's initial suggestion, it would be more appropriate to take points away from applications proposing sites in attendance zones of schools that did not have a Met Standard rating than to award points to

applications that are only meeting requirements staff initially considered to be mandatory. We do believe that it is appropriate to give this scoring item even more weight and suggest the following language:

"…An Application may qualify to receive up to four (4) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (C) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating…

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (4 points);
(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating. For Developments in Region 11, the middle school or high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points);
(C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points).

It should be noted in developing the suggested language above that we have not analyzed the data from the current year in order to conclude that an index 1 score of 70 is an appropriate threshold for middle and high schools in region 11 but agree generally that it should be lower than the other regions.

Section 11.9(c)(6), related to Underserved Area

We disagree with the concept of high growth areas being equated to underserved areas. We believe that the idea of an underserved area is one that is underserved with respect to the amount of affordable housing available. This is why the other paths to score under this item relate to the proximity of other housing tax credit assisted developments and to areas that are particularly difficult to develop. It is very possible to have significant growth as defined in the current draft and also have a high concentration of affordable housing. We see high growth areas as already more attractive to real estate developers and unnecessary to further incentivize. However, we do believe that high growth areas inside large MSAs that lack affordable housing should be incentivized and so suggest that the same criteria used for rural developments be used for urban developments. In addition, we foresee that the administration of this concept as currently drafted could be difficult as staff would need to substantiate evidence regarding new businesses constructed within a particular timeframe and hiring a specific workforce. We believe that this type of language will lead to countless hours of research on the part of staff which would end in multiple appeals and third party requests for administrative deficiencies. We suggest the following language:

An Application may qualify to receive up to two (2) points if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

"…(A) The Development Site is located wholly or partially within the boundaries of a Colonia…(2 points);
(B) An Economically Distressed Area (1 point);
(C) A census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population. (2 points);
(D) A census tract that has not received a competitive tax credit allocation or a 4 percent noncompetitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point).

Section 11.9(c)(7)(A), related to Tenant Populations with Special Housing Needs

We generally disagree with the concept of awarding applications points for something that is not relevant to the actual development being proposed in the application, and we believe that is what is being done by awarding an extra point (3 as opposed to 2) to applicants who have in their portfolio an existing development that includes units set aside to participate in the Department's Section 811 Program. We believe that it is not just an unfair advantage to those developers that may have developments in their portfolios that qualify to participate in the 811 Program but simply not an appropriate way to evaluate the merits of the development proposed in the HTC application. We are also concerned that those applicants who are able to access these points may not necessarily have good compliance histories. Additionally, we believe that incentivizing participation in the 811 Program via this mechanism will not necessarily deliver more 811 units much sooner than it would if HTC applicants were only required to place the 811 units in the developments proposed in the 2016 applications. Therefore, should staff choose to include this option for an additional point, we suggest that they only be awarded if the applicant can provide evidence of a good compliance history and can actually execute an agreement with the Department before the HTC application is submitted. We propose first that the option in this subsection for accessing 3 points be deleted entirely, but alternatively suggest the following language:

"…(A) Applications may qualify for three (3) points if evidence is provided in the Application that a Memorandum of Understanding ("MOU") or other appropriate document has been fully executed by the Department and Applicant (or Affiliate of the Applicant) ~~if a determination by the Department of approval is submitted in the Application~~ indicating participation of an existing Development~~'s~~ in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the portfolio of the Applicant must not have compliance history of a category 2, 3, or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation, and.the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application."

Section 11.9(c)(8), related to Aging in Place

We generally disagree with the concept of this additional scoring item. We understand that it is meant to "replace" the Educational Excellence scoring criteria for elderly developments and that the argument for doing so is that being in the attendance zones of high performing schools is not important to the tenants of an Elderly Development. In addition, some contend that this will prevent developers serving the elderly population from competing over the same sites as those developers serving the general population. We disagree on all accounts. First, considering the new definition of "Elderly Development," it is quite possible that tenants in these developments would have children and so being in the attendance zones of high quality schools would most definitely benefit them. Secondly, even if the tenants do not have

children, being in the attendance zones of high performing schools is simply one of many indicators of a high quality neighborhood in general. This is something that we believe tenants of all ages seek when exercising their choice of where to live. In addition, we do not believe that this would solve any perceived problems regarding developers competing for sites. Applicants are competing for credits, and so anything that would create a "path of least resistance" that is available to one applicant and not another makes it more difficult for the developer without access to that path. We contend that the developer without access to that path would prefer the competition for the site over no access to the less resistant path. If staff does find that there should be a different "path" for elderly developments to compete for credits, then we would suggest at minimum that it be driven by location just as the Educational Excellence scoring item is. While the location of a development is a known fact at the time of application, a commitment to perform certain actions (in this case, develop accessible units and provide services) is in reality an unknown. It very is possible that an Applicant would fail to meet these requirements, and while we appreciate that this is the case for a number of other scoring items, in this particular case it would mean having denied credits to an Applicant that was clearly already meeting the (equivalent) requirement. We suggest deleting the scoring item in its entirety.

Section 11.9(c)(9), related to Proximity to Important Services

As stated previously with respect to §10.101(a)(2) related to Mandatory Community Assets, we disagree with the concept of this new scoring item. Again, while this is not meant to be commentary on whether or not the Department is subject to the Remedial Plan, we would point out that the Remedial Plan did call for staff to remove all development location incentive criteria (outside of the Opportunity Index, Educational Excellence, and those otherwise mandated by statute or federal law) from the QAP. We believe adding this location specific incentive could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index. We did, however, suggest changes to Mandatory Community Assets that incorporate the idea of the importance of proximity to certain community assets. We suggest that this scoring item be deleted in its entirety.

Section 11.9(d)(7), related to Community Revitalization Plan

We generally support the language in this subsection but suggest that the rule could also address instances where cities may develop a revitalization plan in response to a natural disaster. We believe this is in keeping with the overall policy objective behind the rule and suggest the following language:

"...(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) commercial blight, streets and/or sidewalks in significant disrepair;

(-b-) long-term disinvestment, such as significant presence of residential and/or declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as
the manufacture or distribution of illegal substances or overt illegal activities;

(-c-) destruction of property as a result of a natural disaster"

"...(III) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. <u>While it will generally be expected that</u> ~~T~~<u>t</u>his funding ~~must~~<u>would</u> have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service<u>, plans that are more recently adopted due to events that created cause for such a plan may be considered if sufficient evidence is provided to indicate that it is reasonable to expect that the goals of the plan will be able to be met</u>."

Section 11.9(e)(6), related to Historic Preservation

We believe that the point value associated with this scoring item is too high and should be reduced to 2 points. Section 2306.6725 of the Texas Government Code lists several items that are required to be incentivized through the QAP, including leveraging resources, serving traditionally underserved areas, and extending affordability periods, all of which only have one or two points associated with that incentive in the QAP. We do not believe that statute calls for this particular item to be given such a high priority. In addition, because this item is in a very practical sense a location specific criteria, we believe there is potential for this scoring item to undermine the objectives of the Remedial Plan and specifically the Opportunity Index if given too much weight. We propose the following language:

"…An Application includes a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive up to two (2) points. At least one existing building that will be part of the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical
Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status."

Thank you very much for your consideration of our comments and for all of your work in developing these rules.

Sincerely,

Craig Lintner

Craig Lintner
Senior Vice President

(46) Jen Joyce Brewerton, Dominium

From: Brewerton, Jen Joyce
To: "Teresa.Morales tdhca.state.tx.us"
Subject: QAP Comment
Date: Thursday, October 15, 2015 3:29:24 PM

Hi Theresa,

After doing the QAP for those years, I really hate to be that person who comes in on the deadline. I am sorry for that. Here is my comment on the QAP:

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) *Sponsor Characteristics. Previous Participation Compliance History*

I recommend deleting this point item for 2 reasons. First, I believe this will be an administrative nightmare for applicants and TDHCA, unless there are administrative tools in place by TDHCA. An applicant and their partners should know, for certain, their Category rating well before pre-app self-score is due. It is not reasonable to ask an applicant to assess their own Category standing, given that some compliance history less than 3 years old is not captured in CMTS; rather, TDHCA should provide the specific Category to an applicant in advance of the pre-app. Otherwise, there will end up being a ton of appeals. For an important point item like this, it seems reasonable to look at this for 2017, working with TDHCA in advance to come up with a tool and cut-off date that works with the cycle.

Second, I believe this unfairly provides preference to out of state applicants without experience in TDHCA programs, which is the exact opposite of intent for the point item, to reward strong developers with a strong TDHCA compliance history. Speaking from experience, developers inexperienced with TDHCA rules often struggle to get ahead of the learning curve in the area of compliance, because TDHCA compliance is distinctly different from all other states. I would support a point scoring item that provides preference to applicants who have a TDHCA compliance history, and are Category 1, but not an applicant who simply has no history. Of important note: It is not reasonable to use the out-of-state compliance history for a point item. As I said, TDHCA is unique in the complexity of its compliance systems and policies, so a positive compliance history in another state is not equal in meaning to Category 1 of an experienced developer in Texas.

Thank you,

Jen Joyce Brewerton

Director of Compliance and Asset Management

Asset Management
Dominium

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(47) Jessica Perez, Capstone Management

From:	Jessica Perez
To:	teresa.morales tdhca.state.tx.us
Subject:	Public Comment for 2016 QAP and Multifamily Rules
Date:	Thursday, October 15, 2015 3:09:56 PM
Importance:	High

Dear TDHCA and Members of the Board,

On behalf of Capstone Real Estate Services, we would like to submit recommendation for modification to the 2016 Qualified Allocation Plan (QAP) that is currently subject to public comment. Capstone Real Estate Services manages over 100 Affordable Developments and works with several owners with large portfolios throughout the state of Texas. We strive to meet the needs of our clients while maintaining compliance with the state and federal regulations. We ask that you take the following recommendation into consideration as we feel it would affect several if not all owners in the state of Texas.

Qualified Allocation Plan

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) Sponsor Characteristics. Previous Participation Compliance History

Although the Previous Participation Rules in Chapter 1, Subchapter C, Section 1.301 clearly stipulates the categories that different types of portfolios would fall into regarding their previous participation history, we feel that this particular change would prohibit several portfolios from being able to receive this additional point due to issues that are uncorrectable. For example, if a tenant does not sign the Tenant's Rights and Resource Guide and the tenant passes away, the property would not be able to correct the issue, and the issue would remain uncorrectable for 3 years. This one instance would automatically put any portfolio size, small, medium, large, and extra-large in a Category 2. We request that TDHCA repeal this section of the rule and look into modifying it and bringing it back for the 2017 round. If this section remains in the 2016 QAP, we ask that Category 2 be removed from the list in this section, meaning that the portfolio could be a Category 1 or 2 and still receive the additional point. In addition, we request that the point category be tied to an applicant's previous participation history beginning on the start of the 2016 award round. Any outstanding non-compliance that occurred before the start of the 2016 round would not be considered for Category placement.

We recommend the following language to be added:

(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category ~~2,~~ 3 or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation. This point category will be applicable to any events of noncompliance that are uncorrected or events of noncompliance that were not corrected during the corrective action period for the Applicant's previous participation history as of March 1, 2016. (1 point)

We thank you for your time and consideration of these recommendations.

Jessica Perez, HCCP, COS

Tax Credit Compliance Manager

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(48) M Group

October 15, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941
Email: Teresa.Morales@tdhca.state.tx.us

Re: Public Comment 2016 QAP

Dear Teresa,

After careful review of the proposed 2016 Qualified Allocation Plan, we respectfully request staff's consideration of the following public comments:

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) Sponsor Characteristics. Previous Participation Compliance History

While this new scoring item is intended to reward Applicants for exceptional compliance history, the actual affect is punitive to a large number of established and successful Texas developers and creates an unfair competitive advantage to only a handful of developers such as new developers to the program or in particular, out of state developers who may have significant compliance issues but would not be subject to the new scoring benchmark. For example, correction of a finding out of state within the "*corrective action period*" is not verifiable and we question if TDHCA can even verify out of state non corrected compliance findings.

Moreover, Applicants need clarity and confirmation as to their Category status prior to the application acceptance period so that scoring impacts can be analyzed. We also question whether TDHCA can provide such information to all applicants with such new concepts being implemented.

Our issue with this new item is not the concept of reward scoring for compliance history, but how to equitably reward such points to ALL developers without competitive advantage to a select few because as proposed, the scoring item can punish an Applicant for a single event that was corrected but perhaps for reasons beyond the control of the applicant, may not have been corrected within the corrective action period. Indeed, Category 2 portfolios, no matter how large, cannot have a single finding per this new scoring concept and thus is unfair to those Applicants that may have a significant "Texas only" portfolio under review. We believe an uncorrected event should rise to the level of penalty for loss of possible competitive HTC score, but not any single corrected event, regardless if corrected within or

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outside the corrective action period especially if developers who operate outside Texas are not subject to the same compliance review.

Given the newly adopted rules under 10TAC § 1.301 and the new HTC previous participation scoring concept not being fully vetted, we suggest removing this item completely at this time to allow further input so that equitable scoring concepts can be implemented. Alternatively, modifying the language under this item as either *"does not have compliance history of a category 3 or 4 as determined with 10TAC § 1.301"* or *"does not have a compliance history of any uncorrected findings within the last 3 years in accordance with 10TAC§ 1.301* are minimum changes to ensure there is a reasonable standard for competition.

(c) Criteria to serve and support Texans most in need

(4)Opportunity Index

We believe the new scoring criteria provides "bonus points" to only second quartile census tracts and now overweight's the second quartile available scoring points over the top quartile. By adding a new 6 point scoring item for an elementary school solely because it has 1 star of distinction, effectively gives "bonus points" only to second quartile sites whereas top quartile sites are not able to get the same "bonus" option. This is not fair to top quartile sites.

Top quartile site locations remain the most difficult to compete in and thus should be rewarded accordingly with no less than the previous 2 point separation from second quartile sites. We do not buy into the argument that by adding a new point for having a school with one star of distinction "opens up more census tracts" for competition. It actually does not because the existing scoring criteria still rewards sites with +77 or better ratings based on quartile without added bonus points only to second quartile sites.

A simple equitable solution is to give the same "bonus points" to both top quartile and second quartile sites if an elementary school zoned for a particular site has at least one star of distinction. If a site is located within either a top quartile or second quartile than the same bonus point should be given to each quartile site location so now 8 points max can be awarded to a top quartile and 6 points max for a second quartile. Otherwise, the new "bonus points" for one star of distinction should be omitted from the opportunity index.

Finally, we concur that the minimum rating for any school should remain at 77 for purposes of opportunity index.

(5) Educational Excellence

We believe there is not sufficient scoring separation for schools under this scoring criteria. Our research shows that the vast majority of schools actually "Met Standard" so the 3 points under (B) are virtually automatic whereas many high opportunity locations have 2 of 3 schools meeting +77 or better ratings but have no scoring benefit for such exemplary schools. As proposed, its either full points for all schools or everyone else will get virtually automatic points for "Met Standard".

We suggest that there should be 3 levels of scoring for schools based upon the following:

5 points- all 3 schools, (elementary, middle and high) met +77 or +70 (for region 11 and 13)

3 points- two of three schools (elementary, middle or high) met +77 or +70 (for region 11 and 13)

1 point- all three schools Met Standard.

(6) Underserved area

We support the new scoring options but there needs to be further clarification as to what qualifies under such items. For example, the new business point should clarify that the new business can also be an expansion of an existing business and such expansion or new business can be located in a newly constructed space or new lease space. The purpose of the new item is to promote high opportunity locations for the residents served by the program otherwise what's the purpose of a scoring item if it's solely tied to new facilities when ANY business, new or old, creates over 50 new positions?

(9) Proximity to Important Services

Given the goal of promoting "Important services", we suggest that Urgent Care service be restated as a third option for gaining one point. Having 2 of 3 important services to choose from is reasonable and allows many new sites to be competitive. The one mile radius may seem appropriate for most urban locations but reality is that in most top quartile locations where land is available for development, full service grocery stores are outside a one mile radius but inside a 2 mile radius. Meeting any of the proximity to "important services" is a challenge so adding one more service that was originally in the mix should ensure high quality sites are offered to the residents.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

(2) Cost of Development per square foot

We have extensive experience building in Texas with significant yearly production. We continue to see year over year cost increases of 8- 12 % per year. All levels of the cost per foot should be increased no less than 10% to be consistent with the current market place. Moreover, there is an inherent delay in the program application date and the time the developments are ready for construction. The draft QAP assumes costs as of Sept of 2015 whereas actual construction costs are not going to be bid at the earliest until this time NEXT year. Without an increase in the QAP to cover last year's increase, there would be in affect a two year lag of actual cost increases.

Thank you for your time and consideration of these comments.

Sincerely,

MGROUP HOLDINGS, INC.

Mark Musemeche
Vice President

(49) National Church Residences

From:	Tracey Fine
To:	Teresa Morales
Cc:	Tom Gouris (tom.gouris tdhca.state.tx.us); Eric Walker
Subject:	Public comment regarding interpretation of HB 3311
Date:	Thursday, October 15, 2015 3:08:21 PM

Teresa,

First of all, thank you for all your hard work and patience listening to the development community. I know I submitted a lengthy letter on why HB3311 should not apply to At-Risk set-aside yesterday as part of my public comments. I had a chance today to spend time reviewing Texas Code 2706.111 and I think it provides further support for the case. Please include as additional public comment.

Reasons to Exempt At-Risk to the formula creating an Elderly Development cap in HB 3311:

1. Texas Code 2706.111 (d-1) " In allocating low income housing tax credit commitments under Subchapter DD, the department shall, before applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of housing tax credits required under Section 2306.6714."

The formula in HB 3311 applies a limit to Sub-regional allocations. Since tax credits for At-Risk are allocated and committed before the department applies the regional allocation formula, it should be exempt from any Elderly cap implemented under sub-regional allocations.

http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm

2. The HB 33111 Bill Analysis by both Community Affairs and IGR states the intent of the bill is to "add parity to the application process to help ensure

that seniors are provided access to affordable housing resources." If the formula creating an Elderly tax credit cap was applied to the At-Risk set-aside, it would have the exact opposite effect of the bill's intent by significantly reducing the dedicated Senior tax credits.

http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=84R&Bill=HB3311

Tracey Fine

Project Leader, Southwest Region

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Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs

Re**: Interpretation of HB 3311**

Dear Mr. Irvine,

National Church Residences believes HB 3311 has been misinterpreted by TDHCA in the 2016 Draft QAP for Texas' LIHTC program. The intent of HB 3311 was to give point parity to Elderly Developments as these applications previously had a competitive disadvantage compared to General Population Developments. As stated in the Committee Report / Bill Analysis on Urban Affairs and IGR, the bill "*C.S.H.B.3311 seeks to add parity to the application process to help ensure that seniors are provided access to affordable housing resources*."

The original bill, as introduced, proposed only point parity for Seniors. It is generally accepted that building new Low Income Elderly Developments are more palatable to communities compared Low Income Family Developments. As a result, the community raised concerns that point parity alone could contribute to an unbalanced number of Elderly Development applications for new units compared to General Population applications for new units. The bill was then amended to include an allocation cap to urban Elderly developments to ensure Family developments would get done. However, in At-risk, the properties already exist so the same NIMBY issues are not present to sway developers to pick Elderly over Family.

The intent of HB 3311 was not to be implemented in the Preservation or At-Risk set aside for the following reasons:

- At-Risk set aside is NOT subject to sub-regional pool caps and thus is NOT subject to the Elderly sub-regional cap;
- At-Risk developments do NOT increase the number of new low-income elderly units created;
- HB 3311 does NOT specify that the cap is to be applied to the At-Risk Set Aside;
- At-Risk Elderly and At-Risk General population developments have equal scoring so there is no extra incentive to preserve Elderly over Family; and
- By splitting the limited amount of funding under the formula, the State would be implementing the exact opposite of its intention of "ensure[ing] that seniors are provided access to affordable housing resources."

At-Risk competing against New Construction- unequal
Having At-Risk compete against New Construction does not work. Since New Construction applications in Sub-regions score on average 2.5-3 points HIGHER, it is unlikely At-risk would have a higher score than New Construction and would thus go unfunded.

2015 Awards and Scoring

Average At-Risk Score w Award	160
Average At-Risk Elderly w Award	159
Average Urban (region 3,6,9,7) w Award	163
Average Urban Elderly (region 3,6,9,7) w Award	161.5

Furthermore, under Award Methodology in the QAP, the At-Risk set-aside is a higher priority than the Sub-regions and thus should have priority should a cap be implemented. Specifically stated on page 10

of the QAP under At-Risk Set-Aside Application Selection priority: "this step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps."

The methodology favors either At-Risk or New Construction Sub-Region, making it challenging to fairly apply the rule. Guidance wasn't given on this topic as the At-Risk set-aside was not intended to be included.

Devastating to At-Risk Elderly Communities and Growing Senior Population

There is likely only enough cap to allocate 1 Elderly project per sub-region. In 2015, there were 9 Elderly allocations combined in effected Sub-regions including At-risk in the same sub-regions. If the cap is implemented to cover At-Risk, likely only 4 Elderly projects will get funded in these regions in total.

Implementing the Elderly cap in the At-Risk set aside would be devastating for hundreds of existing senior developments throughout the majority of Texas. The bill would not have been passed if the intent was to stifle a community by blocking a Preservation / At-Risk Elderly development from accessing the needed capital to remain viable real estate serving some of Texas' most vulnerable Seniors.

There is not enough senior affordable housing to meet the need. In 2012, there were 11.5 million extremely low-income renters in the US and only 3.3 million affordable apartments available, leaving a gap of 8.2 million affordable homes nationwide. Further, as the seniors who live in affordable housing age, so do the properties, which were often built 25+ years ago. It is critical to preserve these communities because if we don't, we risk losing precious and limited affordable housing stock permanently, much of which is heavily subsidized. As the buildings age, there are no other resources available other than the Low Income Housing Tax Credit (LIHTC) program to preserve these communities so they remain a safe and healthy residence for our seniors to age in place with dignity.

It is estimated that in the US, 10,000 people will turn 65 everyday for the next 15 years. Since Texas is one of the most populace states in the nation, we will directly be experiencing this growth. With Texas' existing and tidal wave of aging Seniors, we cannot afford to interpret HB 3311 to include At-Risk, dividing affordable housing resources to Seniors in half, a direct opposite of the bill's intention.

I ask that TDHCA honor the intent of HB 3311 by not implementing an Elderly cap to the At-Risk set aside.

Kind regards,

Tracey Fine

Tracey Fine
Project Leader
Office Location: Austin, Texas
Cell: 773.860.5747
tfine@nationalchurchresidences.org

cc: Eric Walker, Matt Rule

October 14, 2015

Ms. Teresa Morales
Interim Multifamily Director
Texas Department of Housing and Community Affairs

Re**: Public Comment for 2016 QAP and Rules**

Dear Teresa,
Thank you for the opportunity to present recommendations for the 2016 draft Qualified Allocation Plan (QAP). Included below are recommendations on behalf of National Church Residences.

2016 Qualified Allocation Plan

1. **HTC Allocation Process – (3) Award Recommendation Methodology / HB 3311**
   Please see separate letter outlining our concerns about how TDHCA will implement this bill.

2. **Opportunity Index – Raise the Poverty Rate to 20%**
   We encourage TDHCA to raise the poverty rate from a threshold of 15% to 20%. This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunity".

   In addition, in an article published by HUD on neighborhoods and poverty rates states "that the independent impacts of neighborhood poverty rates in encouraging negative outcomes for individuals like crime, school leaving, and duration of poverty spells appear to be nil unless the neighborhood exceeds about 20 percent poverty"
   http://www.huduser.gov/portal/periodicals/em/winter11/highlight2.html

   Not only will several very worthwhile communities benefit from this change, TDHCA can further enhance their goals of awarding projects considered high opportunity in high performing schools for the following reasons:
   - This would allow a larger group of census tracts to be able to score on high opportunity thus promoting further de-concentration of awards;
   - This would better allow projects in very desirable and high-income communities with highly rated schools to be more competitive;
   - Projects would still be required to be in the 1st or 2nd Income Census tract in Urban areas – areas already considered "high opportunity";
   - Would allow more desirable sites that are closer to services and town centers in rural areas to be more competitive ;
   - This change helps alleviate the issue that Residents living in preservation properties are part of the poverty rate, and making their own communities uncompetitive.

3. **Aging in Place**
   We are very pleased that staff recognizes the importance of services at senior properties. However, as I spoke at the Board meeting on 9/11/2015, requiring 100% of the units to be mobility accessible is unnecessary and does not support the target population. Seniors prefer to live in a standard unit and find a 100% mobility campus stigmatizing and institutional. To effectively implement TDHCA's goals of Aging in Place, we recommend the following:

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (1 point):

a. "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms;

b. Chair height (17 – 19") toilets in all bathrooms;

c. A continuous handrail on at least one side of all interior corridors in excess of five feet in length; and

d. 100% of units include blocking in showers/tubs to allow for grab bars at a later date to adapt the unit if needed/requested in the future.

(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 points):

i. A minimum of 16 hours per week for Developments of 80 units or less; or

ii. A minimum of 32 hours per week for Developments of 81 +units.

4. Aging in Place – Point Parity

Again, we are thrilled that TDHCA recognizes that housing seniors requires different services and amenities than general population projects. Under the current QAP, Aging In Place is 3 points while Educational Excellence is 5 points. As a result, there is not point parity for Elderly developments as required under HB 3311. In order to comply with HB 3311 and encourage saving precious high performing school sites for family projects, we ask that these two categories remain equal in scoring.

5. Aging in Place for Supportive Housing for Households without Children

We recommend that Supportive Housing comprised of 100% 1 bedroom and efficiency units serving single adults or households without children be allowed to score under Aging in Place in lieu of Educational Excellence. Single adults/Households without children do not house school-age children and schools are not a resource for this very vulnerable population.

At National Church Residences, we either own and/or manage approximately 700 units of Supportive Housing specifically with an emphasis on homeless, at-risk and disabled individuals living single. Our average age is 51 and 76% of our residents have a disability. Incentivizing Supportive Housing for single adults to be coupled with services and accessible design features would be a tremendous resource in serving this vulnerable population.

Recommended language:

(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development and Supportive Housing that serves households without children (100% 1 bedroom and/or studios) may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

**Note –Per Housing Authority administration, a 1 bedroom serves up to 2 adults of the same generation. A 2 person household with 1 adult and 1 child under age 18 would require a 2 bedroom unit.

6. Criteria promoting the efficient use of limited resources and applicant accountability / Cost of Development per Square Foot.

A. TDHCA recognizes that high cost developments including Elderly Developments with elevators are more costly for new construction. Extra expenses that are categorized as High Cost in new construction also raise costs in Preservation developments and thus, need to be recognized as high cost developments. In order to appropriately make critical repairs for an elevator building, update and improve ADA compliance, include design features for Aging In Place, improve green and sustainable features among other repairs, $/SF must be increased, particularly since this includes acquisition costs. This is especially critical for Elderly properties where 100% of the units are small and the $/SF is based only on rentable area. We propose the following language:

(e)(E)(ii) Applications proposing Adaptive Reuse or Rehabilitation:
Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the development is considered a High Cost Development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

B. $/SF limitations have not increased since 2013. While we understand TDHCA's desire to award credits to the maximum number of developments, construction and labor costs have rapidly inflated 8-12% annually during this time period. The $/SF limitation unfairly hurts Elderly and Supportive Housing serving single individuals (100% studios and 1 br units) because the bulk of costs are in the kitchen and bathrooms so these costs cannot be spread over larger size units as in family developments. Projects serving these vulnerable individuals are limited to $50,000-$65,000 a unit for an elevator building or $100/sf (including extra 50 feet per unit for S.H.). This is especially unrealistic for an elevator building in urban areas like Austin.

In addition, this incentive encourages lessor quality materials along with forgoing green and sustainability standards. These lower quality materials also result in higher maintenance and utility costs which ultimately get passed to residents in the form of rental increases. We request TDHCA increase all $/SF limitations by 15% to account for actual hard cost increases and inflation since 2013.

7. Underserved Area (F)

We appreciate the addition of recognizing the importance of new job opportunities. However, a significant amount of job growth in higher wage jobs occur in leased office space and not a "constructed new facility". We recommend adding in a company that has leased new and/or additional office space to account for this white collar and high wage job growth.

Recommended language:
(E)Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and or additional) office space and undergone initial hiring of its workforce…

8. **Sponsor Characteristics – Previous Participation Compliance History**
National Church Residences does not support the addition of 1 point for Category 1 under Pervious Participation Compliance History. There are numerous instances when a non-compliance issue cannot be cleared because the remedy is completely out of the Owner's hands. In addition, corrective actions are beholden to TDHCA's response time, which in our experience, has taken several months. These citings do not translate into poor owners and managers and many quality developers and owners are being unfairly penalized by not being able to capture this additional point.

9. **Opportunity Index- Rural**
We are pleased that TDHCA recognizes the need to couple Elderly Developments with services in lieu of schools. Below is guidance on what we recommend for "access to services specific to a senior population":
   - Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site);
   - Access to primary health care including partnerships for on-site services, urgent care clinics that accepts Medicaid/Medicare, Primary care doctors offices that accept Medicaid/ Medicare, ERs and Hospitals; or
   - Other senior appropriate services as evidenced by the applicant.

2016 Underwriting Rules

10. **Mandatory Development Amenities**

    We recommend that central air not be required for acquisition/rehabilitation properties for all one-bedroom and efficiency units that do not currently have this feature and operate with PTACs for the following reasons:

    - A PTAC unit is sufficient to adequately and comfortably heat / cool and can be adapted successfully for both efficiency and one-bedroom units.
    - The cost to replace a PTAC system with central air is cost prohibitive in an existing project. For example, on National Church Residences' Prairie Village in El Campo, Texas (a 38-unit acq/rehab), the cost to replace the existing PTACs with high efficiency PTACs would have been $85,000 versus installing central air at $290,000. The project could have **saved $163,685 ($4,307/unit)** by using high efficiency PTACs. These funds could have been spent more effectively and had greater impact elsewhere.
    - The QAP's $/SF point advantage that restricts the amount of hard costs makes it difficult to add this cost into the budget while remaining competitive. Adding this cost will require eliminating other critical scope.
    - PTACs are much less expensive as it relates to long-term maintenance costs. A non-certified technician can maintain a PTAC, while split system maintenance requires a certified technician, further increasing the operating expenses of the project.

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Proposed Language:

(L)All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO, Efficiency Units AND Rehabilitation developments consisting of efficiency and one bedroom units that currently have PTACs only);

Note: We recommend a PTAC with an EER 11.5 rating.

11. Undesirable Neighborhood Characteristics – Schools

Please remove from threshold the requirement that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. This additional barrier ensures that no new quality affordable housing is constructed in gentrifying urban areas. Furthermore, this rule does not take into account Supportive Housing developments for individuals (100% studio and 1 bedroom) that only lease to adults, who have no need or use for a higher performing school. At the very least, the Elderly exclusion should be for ALL Elderly Developments, not just "limitation" as all Elderly Developments are designed and intend to serve Elderly who do not use primary schools.

12. Mandatory Community Services and Other Assets.

We recommend amending item (X), On-site Service Coordinator under Tenant Supportive Services to be consistent with the Aging-in-Place language so that smaller developments can effectively implement this expensive, yet extremely important service.

We recommend TDHCA amend item (X) "a full-time resident services coordinator with a dedicated office space at the development" to:

- *(X) An on-site resident services coordinator at the development that works a minimum of 16 hours per week for developments of 80 units or less and a minimum of 32 hours for developments 81 units or more.*

13. Neighborhood Scout

Please remove the use of Neighborhood Scout as a crime index. This tool does not accurately portray crime and safety in neighborhoods. As a result, excellent and desirable sites will be eliminated. TDHCA ended the requirement to use this website after noting problems with the site's data collection prior to the 2015 QAP. Recommended language:

(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com.

We appreciate the opportunity to provide comments and would be happy to provide any additional information.

Sincerely,

Tracey Fine
Project Leader
Office Location: Austin, Texas
Cell: 773.860.5747
tfine@nationalchurchresidences.org

CC:
Eric Walker
ewalker@nationalchurchresidences.org
Work: 614-273-3734

(50) DMA Development Company

DEVELOPMENT COMPANY, LLC

October 14, 2015

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: 2016 QAP/MF Rule Comments

Dear Teresa:

Please accept the following public comment from DMA Development Company, LLC.

Opportunity Index

DMA strongly supports the addition of the new point category for development sites located in the second quartile with exceptionally well performing schools. We believe that second quartile sites provide equal opportunity as compared with first quartile sites, especially when the schools are exceptional.

Underserved Area

DMA strongly supports the addition of above average population growth and new job creation to this category. With regard to the job growth category, we encourage TDHCA staff to consider the reference tool that we submitted in our previous written comments. http://onthemap.ces.census.gov/

Aging In Place

DMA strongly supports the following replacement language in lieu of the language in the published rules. This is based on the rationale that many senior residents are not in wheelchairs so the requirement for 100% of the units to be fully accessible does not best serve the target population. Additionally, constructing a development with 100% accessible units is cost prohibitive and may be very difficult to market because fully accessible unit have an institutional feel. Our proposed language also provides some scaling in terms of how many supportive service staff hours are needed at properties based on the size of the property.

Our suggested language is:

An Application for an Elderly Development may qualify to receive up to five (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include: (3 points)

4101 PARKSTONE HEIGHTS DRIVE SUITE 310 AUSTIN, TEXAS 78746
TEL: 512.328.3232 WWW.DMACOMPANIES.COM FAX: 512.328.4584

a. “Walk-in” showers of at least 30” x 60” in at least 50% of all residential bathrooms;
b. 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;
c. Chair height (17 – 19”) toilets in all bathrooms; and
d. A continuous handrail on at least one side of all interior corridors in excess of five feet in length.
(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 point):
i. A minimum of 16 hours per week for Developments of 80 units or less;
ii. A minimum of 24 hours per week for Developments of 81 to 120 units; and
iii. A minimum of 32 hours per week for Developments in excess of 121 Units.

Sponsor Characteristics, Previous Participation

DMA requests that the ability to receive 1 extra point for a positive compliance history be available for Category 1 and Category 2 portfolios. For those developers with extra-large portfolios, the standard for Category 1, which requires not a single issue of non-compliance not corrected within the corrective action period, is almost impossible to achieve, especially given that TDHCA’s compliance staff often does not review the corrective action within the corrective action period.

At-Risk Set-Aside/Elderly Developments

DMA is very concerned that TDHCA is taking the position that elderly developments funded under the at-risk set-aside would count toward the new senior formula created by House Bill 3311. While the “at risk” set-aside is a valuable tool, for the most part, it does not create any new units, which is why it was to be exempt from the overall senior parity formulas created for new construction units.

HB 3311 was initially proposed as a bill to obtain parity for senior communities by requiring TDHCA to level the playing field for senior developments which were at a 3 to 5 point scoring disadvantage under the 2014 and 2015 QAPs. During negotiations on this bill, it was discussed that in the larger regions it was important to ensure parity among new development in the four large allocation areas so that the balance did not tilt in favor of EITHER family or senior housing, but instead was reflective of the need (demand versus supply) in those geographical areas. When the statute was drafted, the intent was to apply the formula only to the urban subregions in Regions 3, 6, 7 and 9, not to the At Risk Set-aside which is funded before the regional allocation is funded. The formula does not reflect the need of persons (senior or family) already housed in affordable units which may or may not be eligible for prepayment and in need of rehab. The need part of the formula reflects UNSERVED households and the formation of the Statute follows the same logic that was developed several years ago to allow “at risk” properties to compete among themselves, giving those applicants some scoring assurance that they would not be impacted by the scoring anomalies of their respective regions. If we were truly going to apply the formula to the “at risk” setaside, we would have to factor in both elderly and family developments. Whether the language reads “at least” or “not more than” does not impact the fact that the concept was one of parity – not one to restrict senior housing!

Based on the foregoing, we strongly encourage TDHCA to strike the sentence stricken below:

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. ~~This includes any Applications awarded under subparagraph (B) of this paragraph.~~ The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h). These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)).

Please do not hesitate to contact me with any questions about these comments. I can be reached at 512-328-3232 ext. 4504.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

Diana McIver
President

(51) Texas Association of Community Development Corporations

ENHANCING COMMUNITIES THROUGHOUT TEXAS

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Brazos Valley Affordable Housing Corporation

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Rafael Torres
Azteca Economic Development and Preservation Corporation

Gary Lindner
PeopleFund

Matt Hull
Executive Director

October 15, 2015

Mr. Tim Irvine
Ms. Marni Holloway
Texas Department of Housing and Community Affairs
Attention: Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Tim and Marni:

The Texas Association of Community Development Corporations appreciates the opportunity to address some of our members' concerns regarding the 2016 Draft Rules. We are especially appreciative of the Department's availability to our organization and willingness to work with us and all other stakeholders.

Multi-Family Rules:
10.901 Application Fee: TACDC members are opposed of changing the language regarding the Application Fee for nonprofit organizations from "will receive a discount of 10% " to "may be eligible to receive a discount of 10%". We feel the language should remain as previously stated in the rules to provide a small, but meaningful incentive to nonprofit developers.

10.101 Site and Development Requirements and Restrictions- Use of Neighborhoodscout.com
TACDC members are uncomfortable with the agency's requirement to use neighborhoodscout.com to determine crime rate and statistics within the same census tract or within 1,000 feet of the proposed development site.

Our concerns are twofold: First as proprietary software, we are unsure how the website owners collect, analyze, and report data across a city. Second, a few of our members have tried to replicate and reconcile the data reported in neighborhoodscout.com with publically available data from their police department and they were unable to do so. In some instances, the rates of violent crime have been misreported to a large degree and in other cases when comparing crime rates across different neighborhoods, neighborhoodscout will report that one neighborhood has more violent crime compared to another when the police data says just the opposite. TACDC members suggest the agency not rely on this website for purposes of TDHCA's multifamily programs.

10.101 Undesirable Neighborhood Characteristics – Schools
TACDC members support National Church Residences request to remove from threshold the requirement that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. This additional barrier ensures that no new quality affordable housing is constructed in gentrifying urban areas. Furthermore, this shortsighted rule does not take into account Supportive Housing developments for individuals (100% studio and 1 bedroom) that only lease to adults, who have no need or use for a higher performing school. At the very

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PeopleFund

Matt Hull
Executive Director

least, the Elderly exclusion should be for ALL Elderly Developments, not just "limitation" as all Elderly Developments are designed and intend to serve Elderly who do not use primary schools.

Qualified Allocation Plan:
11.9 Aging in Place. (§2306.6725(d)(2), TACDC members are pleased to see the inclusion of points for hiring an onsite service coordinator. However, our members have a concern that the effectiveness of the service coordinator will be diminished if the person is part of the property management team. TACDC members request clarification that the person is a dedicated service coordinator and is not part of the property management team to help ensure the effectiveness of the service coordinator.

11.9 Concerted Revitalization Plan: TACDC supports the comments of Houston LISC regarding this section and generally concurs in the proposed revisions to Subsection (i) (I-III). These dictate that the concerted revitalization plan must have been adopted by the municipality or county in which the site is located, that the problems identified in the plan be identified via a public process, and what problems and elements generally should be considered in the plan.

Like Houston LISC, TACDC does not support the requirements of Subsection (i) (IV) that the funding for implementation of the plan be such that the problems identified in the plan be solved prior to the Development being placed in service. As proposed, this requirement would mean that investment in affordable housing would come very near the end of the revitalization process and not before. While we would concur that investment in affordable housing should not necessarily occur at the beginning of the revitalization process moving it to the end (1) negates the positive impact affordable housing development can have on an area that is on a positive revitalization trajectory and (2) may make impractical the purchase of the land for an affordable housing development project due to rising land costs in an area that is at the end of its redevelopment cycle.

We believe the language used in the most recent QAP (2015) is more appropriate. This language dictates that "the community revitalization plan must already be in place" and that "funding and activity under the plan has already commenced".

We would therefore propose that Subsection (IV) be revised to read as follows:

(IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timeline. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be mitigated within a period of time commensurate with the plan's timeline prior to or after the Development has been placed in service.

Asset Management Rules:
Similarly to our concerns under 11.9(b)(2) regarding Sponsor Characteristics, TACDC members are concerned that 10.406(d) under the Asset Management Rules may encourage the removal of participating nonprofit organizations from the

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development ownership structure without cause and beyond the legislative intent of HB3567 regarding changes to the Right of First Refusal when selling properties. We encourage staff to look at additional safeguards to protect the ownership interest of nonprofits materially participating in joint ownership agreements.

Thank you for considering our concerns with the 2015 Draft Rules and our members will work with staff during the public comment period to suggest improvements to the final rules.

Best regards,

Matt Hull
Executive Director

Texas Association of Community Development Corporations
2200 East Martin Luther King Jr. boulevard Austin, Texas 78702 ★ phone (512) 916-0508 ★ fax (512) 916-0541 ★ www.tacdc.org

(52) Cayetano Housing

September 30th, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

Re: 811 Points, QAP Section: Tenant Populations with Special Housing Needs

Dear Ms. Morales,

My name is Kyndel Bennett, and I am a developer with Cayetano Housing. My company is fairly new to this program, and we have competed for the last three seasons, winning rural allocations in two of the last three years. I'd like to comment on a proposed change to the QAP, which would create an unfair advantage to developers who own portfolios in select areas of the state.

The new, 3-point scoring will only be available to developers that have existing units in areas where 811 services are available: currently the seven, urban, metropolitan areas of Texas. Everyone else can only earn 2-points in this category. As TDHCA is aware, most deals are won or lost by 1-point, so creating a scoring item that's only accessible to select developers is anti-competitive and exclusionary.

If the goal of this rule is to put more 811 units into service, making this a threshold requirement of the 4% program seems to make a lot more sense. 4% deals are not competitive, are typically larger projects and are usually located in markets where services are more readily available for 811 tenants.

As the new rule is currently written, developers like me will no longer be able to compete, and new developers will not enter the industry. Favoring one developer over another is not the way this program has traditionally worked and seems contrary to the spirit of what we are trying to achieve.

Please consider modifying this language in the draft QAP to give all developers in all areas of Texas equal access to the same scoring items.

Sincerely,

Kyndel W Bennett
Cayetano Housing, Principal

September 29th, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

Re: 811 Points, QAP Section: Tenant Populations with Special Housing Needs

Dear Ms. Morales,

My name is Matthew Long, and I am a developer with Cayetano Housing. My company is fairly new to this program, and we have competed for the last three seasons, winning rural allocations in two of the last three years. I'd like to comment on a proposed change to the QAP, which would create an unfair advantage to developers who own portfolios in select areas of the state.

The new, 3-point scoring will only be available to developers that have existing units in areas where 811 services are available: currently the seven, urban, metropolitan areas of Texas. Everyone else can only earn 2-points in this category. As TDHCA is aware, most deals are won or lost by 1-point, so creating a scoring item that's only accessible to select developers is anti-competitive and exclusionary.

With this new rule, developers like me will no longer be able to compete, and new developers will not enter the industry. If the goal of this rule is to put more 811 units into service, certainly there is a way to accomplish this without sacrificing the integrity of the program. Favoring one developer over another is not the way this program has traditionally worked and seems contrary to the spirit of what we are trying to achieve.

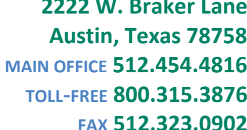
Please consider modifying this language in the draft QAP to give all developers in all areas of Texas equal access to the same scoring items.

Sincerely,

Matthew J. Long
Cayetano Housing, Principal

512.762.8471 4600 Finley Dr. Austin, TX 78731 CayetanoDevelopment.com

(53) Disability Rights Texas



October 6, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

Disability Rights Texas is the federally designated legal protection and advocacy agency for people with disabilities in Texas. Our mission is to help people with disabilities understand and exercise their rights under the law, ensuring their full and equal participation in society. The lack of resources for housing for those individuals identified in institutions with service supports in place is preventing their relocation to the community. These individuals could be assisted to move into the community with the Section 811 Project Rental Assistance (PRA) Program and the Low Income Housing Tax Credit (LIHTC) units.

The Texas Department of Housing and Community Affairs has an opportunity to more quickly implement the Section 811 PRA Program through the staff recommended scoring changes to the 2016 LIHTC Qualified Allocation Plan (QAP). The extra incentive point for units to be placed in existing properties, as opposed to the new construction/rehab property being financed by the tax credits which would not be available until 2 or 3 years from now, would provide a resource vital to the success of this effort to address the housing needs of individuals in nursing facilities to move into the community.

All state agencies must be serious about a commitment to moving individuals from institutional settings. The barrier of securing affordable housing must be addressed to support this transition and to prevent unnecessary institutionalization.

Thank you for the opportunity to provide public comment.

Sincerely,

Jean Langendorf
Policy Specialist

(54) Easter Seals Central Texas

Easter Seals Central Texas

Memo

To: Tim Irvine, Executive Director, TDHCA

From: Tod Marvin, President & CEO, Easter Seals Central Texas

cc: Teresa Morales

Date: September 28, 2015

Re: Comments regarding the proposed draft 2016 Qualified Allocation Plan

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For over 76 years Easter Seals Central Texas has been providing quality, person-centered services to adults and children with disabilities. We provide a variety of services across the lifespan, including Early Childhood Intervention, employment training and housing. As housing providers, we are well aware of the challenges that individuals with disabilities face when trying to find a place to live. We would like to voice our support for the extra incentive that was included in the draft 2016 QAP for developers choosing to set aside existing units for the 811 PRA program.

The 811 PRA program is an important program that helps extremely low-income people with disabilities find a place to live in their communities. People with disabilities often face more complex barriers to housing than the general population because of factors associated with finding an accessible unit and being in a resource-rich area close to service providers.

Last year was the first year that incentives for developer participation in the 811 PRA program were used in the state's QAP, resulting in 17 properties (a mix of both new and existing construction) choosing to set aside units for the program. While this is a great achievement, not all of the 811 PRA program funds were used, illustrating the need for more developers to participate in the program. Maintaining good relationships with the developer community is key to ensuring the success of this program, and incentivizing developers to participate with QAP points will help to ensure that the 811 PRA program is robust.

The 2016 QAP goes further to incentivize participation in the program, specifically by awarding an extra point for tax credit applications that set aside units in existing properties. This is an excellent way not only to encourage developer participation in the program, but to increase the available housing stock now instead of waiting two to three years for new construction projects to be completed.

We want to thank TDHCA for recognizing the importance of the 811 PRA program, and for including incentives in recent QAPs to encourage participation. This program makes a tremendous difference in the lives of individuals with disabilities and should not only be preserved, but strengthened so Texas can serve as many people in need of housing as possible, as quickly as possible.

(55) Eduardo Requena

From:	Eduardo Requena
To:	Teresa.Morales tdhca.state.tx.us
Subject:	Low Income Project Notification Process Change Request
Date:	Friday, September 25, 2015 6:42:36 AM

Teresa Morales,

The residents of any subdivision should be notified when these low-income projects are planned to be built in our neighborhoods either through the HOA or through each individual family that is going to be affected by.

It is not fair that the people that are going to be most affected by these low-projects are not notified – "This is not the America that I dreamed about"

I have been living in this neighborhood for 21 years and my American dream was to bought a house in these area of the city. Well I guess you killed my "American dream". Now I need to sell my house and move to another county were they do care about their tax payers!

Best Regards,

Eduardo Requena

8302 Chelsea Bend Court

Houston, TX 77083

(56) Ines Medrano

From: ines.medrano81
To: Teresa.Morales tdhca.state.tx.us
Subject: TDHCA 2016 Rule Change Request
Date: Friday, September 25, 2015 12:10:52 PM

Dear Teresa:

Noted below are the requested rule changes for Year 2016:

§10.203. Public Notifications(§2306.6705(9)).

(1) Neighborhood Organization Notifications.

Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the

county or the state **as of 90 days prior**to the Full Application Delivery Date and whose boundaries

are **immediately adjacent to or in a radius of two miles** from the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood

Organizations (HOA's) on record with the county or state **as of 90 days prior**to the Full Application

Delivery Date and whose boundaries are **immediately adjacent to or in a radius of two (2) miles** from

the proposed Development Site as of the submission of the Application.

(2) Notification Recipients.

(A) Neighborhood Organizations (HOA's) on record with the state or county **as of 90 days prior** to

the Full Application Delivery Date whose boundaries are **immediately adjacent to or within a two (2) miles radius** to the Development Site;

Definitions of Terms:

- **Notify** - The actual or physical presentation of a hardcopy document to an HOA. Meetings or conversation are not considered notifications.
- **Identify** – An actual or physical list as a hardcopy document of HOA's, along with physical addresses, and contact person, and phone number

Sent on the new Sprint Network from my Samsung Galaxy S®4.

(57) Jannathan Fam

From: Jannathan Fam
To: Teresa.Morales tdhca.state.tx.us
Subject: Appaling Lack of Notification
Date: Friday, September 25, 2015 2:39:58 PM

Dear Teresa,

I was notified by my HOA of the fact low income housing will be placed adjacent to our neighborhood. This is a complete surprise to all our community members. We are in shock of the potential fall out from this development. It appears the builder took advantage of a loop hole in the process to win approval and circumvented the need to notify Chelsea HOA and surrounding communities. They have already broken ground of their apartment and we are left without many options to stop them.

Below is a request for rule changes courtesy of Chelsea HOA. I implore you to consider these changes so no other community suffers the same fate as ours. It is unjust for this to happen to us without proper notification.

(1) Neighborhood Organization Notifications.
Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the
county or the state **as of 90 days prior** to the Full Application Delivery Date and whose boundaries
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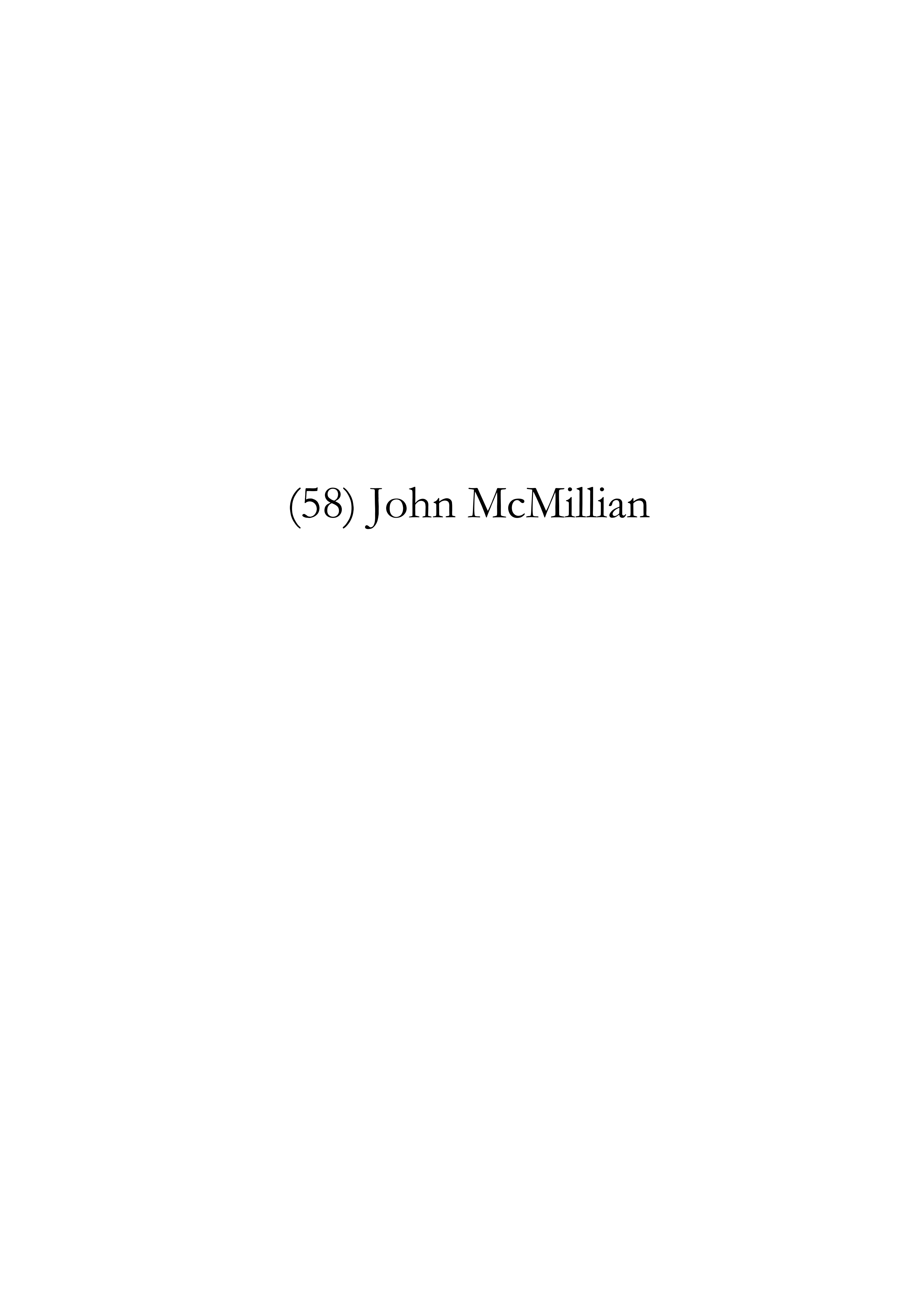

(58) John McMillian

From: jmcmilljr aol.com
To: Teresa.Morales tdhca.state.tx.us
Subject: 2016 Rule Change Reqest
Date: Friday, September 25, 2015 12:22:44 PM

Dear Teresa:

Noted below are the requested rule changes for Year 2016:

§10.203. Public Notifications (§2306.6705(9)).
(1) Neighborhood Organization Notifications.
Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the county or the state **as of 90 days prior** to the Full Application Delivery Date and whose boundaries are **immediately adjacent to or in a radius of two miles** from the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations (HOA's) on record with the county or state **as of 90 days prior** to the Full Application Delivery Date and whose boundaries are **immediately adjacent to or in a radius of two (2) miles** from the proposed Development Site as of the submission of the Application.

(2) Notification Recipients.

(A) Neighborhood Organizations (HOA's) on record with the state or county **as of 90 days prior** to the Full Application Delivery Date whose boundaries are **immediately adjacent to or within a two (2) miles radius** to the Development Site;

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John McMillan
Chelsea Mission Bend Homeowner

Now on watch for the depreciation on my home value/crime that is sure to come due to how this project was generated without appropriate notification.

(59)Mimay Phim

From: Mimay Phim
To: Teresa.Morales tdhca.state.tx.us
Subject: TDHCA - 2016 Rule Change Request
Date: Tuesday, September 29, 2015 7:36:38 PM

Dear Teresa:

Noted below are the requested rule changes for Year 2016:

§10.203. Public Notifications (§2306.6705(9)).

(1) Neighborhood Organization Notifications.

Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the

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(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood

Organizations (HOA's) on record with the county or state **as of 90 days prior** to the Full Application

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the proposed Development Site as of the submission of the Application.

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(60)Portia Haggerty

From: Portia M. Haggerty
To: teresa.morales tdhca.state.tx.us
Subject: Proposed Rules Change
Date: Friday, September 25, 2015 1:43:17 PM
Importance: High

Dear Teresa:

Noted below are the requested rule changes for Year 2016:

§10.203. Public Notifications (§2306.6705(9)).

(1) Neighborhood Organization Notifications.

Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the

county or the state **as of 90 days prior** to the Full Application Delivery Date and whose boundaries

are **immediately adjacent to or in a radius of two miles** from the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood

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Delivery Date and whose boundaries are **immediately adjacent to or in a radius of two (2) miles** from

the proposed Development Site as of the submission of the Application.

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Definitions of Terms:

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- **Identify** – An actual or physical list as a hardcopy document of HOA's, along with physical addresses, and contact person, and phone number

Kind regards,

Portia Haggerty, CPA

16606 Parliament Dr.

Chelsea Mission Bend Subdivision

Houston, TX 77083

(61)Thy Phamnguyen

From: Thy Phamnguyen
To: Teresa.Morales tdhca.state.tx.us
Subject: TDHCA - 2016 Rule Change Request
Date: Friday, September 25, 2015 12:59:37 PM

Dear Teresa:

Noted below are the requested rule changes for Year 2016:

§10.203. Public Notifications (§2306.6705(9)).

(1) Neighborhood Organization Notifications.

Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the

county or the state **as of 90 days prior** to the Full Application Delivery Date and whose boundaries

are **immediately adjacent to or in a radius of two miles** from the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood

Organizations (HOA's) on record with the county or state **as of 90 days prior** to the Full Application

Delivery Date and whose boundaries are **immediately adjacent to or in a radius of two (2) miles** from

the proposed Development Site as of the submission of the Application.

(2) Notification Recipients.

(A) Neighborhood Organizations (HOA's) on record with the state or county **as of 90 days prior** to

the Full Application Delivery Date whose boundaries are **immediately adjacent to or within a two (2) miles radius** to the Development Site;

Definitions of Terms:

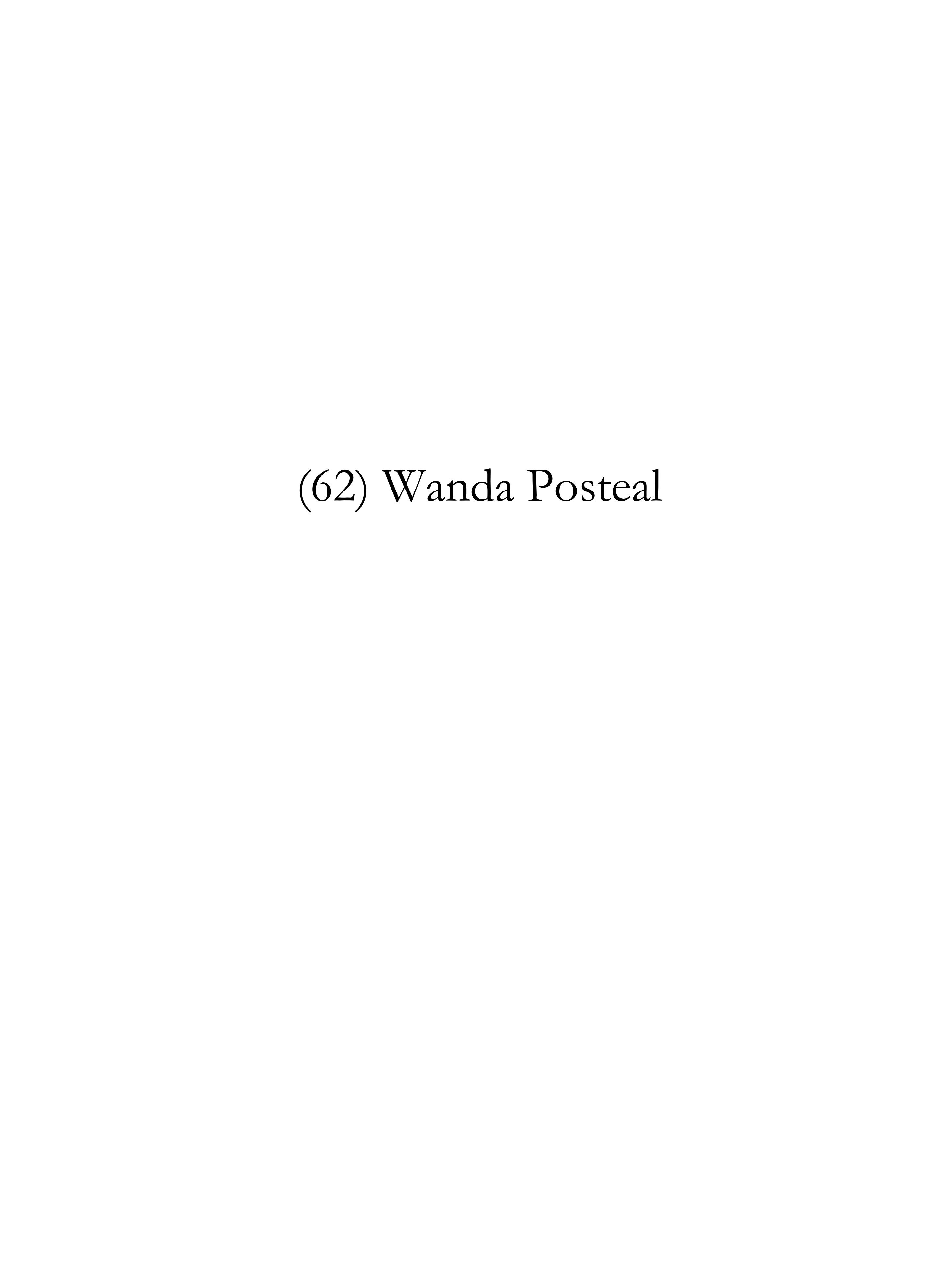
- **Notify** - The actual or physical presentation of a hardcopy document to an HOA. Meetings or conversation are not considered notifications.
- **Identify** – An actual or physical list as a hardcopy document of HOA's, along with physical addresses, and contact person, and phone number

Thanks,

Thy Phamnguyen

16502 Brentford Ct,

Houston TX 77083


(62) Wanda Posteal

From: [Wanda Posteal]
To: [Teresa.Morales tdhca.state.tx.us]
Subject: TDHCA - 2016 Rule Change Request
Date: Friday, September 25, 2015 12:03:48 PM
Importance: High

From: Wanda Posteal [mailto:wnpos1@aol.com]
Sent: Friday, September 25, 2015 11:28 AM
To: 'Teresa.Morales@tdhca.state.tx.us'
Subject: TDHCA - 2016 Rule Change Request

Dear Teresa:

Noted below are the requested rule changes for Year 2016:

§10.203. Public Notifications (§2306.6705(9)).

(1) Neighborhood Organization Notifications.

Page **10** of **27**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the

county or the state **as of 90 days prior** to the Full Application Delivery Date and whose boundaries

are **immediately adjacent to or in a radius of two miles** from the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood

Organizations (HOA's) on record with the county or state **as of 90 days prior** to the Full Application

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the proposed Development Site as of the submission of the Application.

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Definitions of Terms:

- **Notify** - The actual or physical presentation of a hardcopy document to an HOA. Meetings or conversation are not considered notifications.
- **Identify** – An actual or physical list as a hardcopy document of HOA's, along with physical addresses, and contact person, and phone number

Regards,

Wanda Posteal

(63) Deborah Thompson, Wells Branch Neighborhood Association

From: Deborah Thompson
To: Teresa.Morales_tdhca.state.tx.us
Subject: Input regarding the Housing Tax Credit Program QAP
Date: Thursday, October 15, 2015 3:48:54 PM

Texas Department of Housing and Community Affairs

Attn: Teresa Morales

P.O. Box 13941

Austin, Texas 78711-3941

Email: Teresa.Morales@tdhca.state.tx.us

Input from **Wells Branch Neighborhood Association, 2104 Klattenhoff Drive, Austin, TX 78728** relative to the scoring process used by the Texas Department of Housing and Community Affairs (TDHCA) in evaluating whether to award federal tax credits for the construction of low-income housing for the agency's Housing Tax Credit (HTC) 9% competitive 2016 Qualified Allocation Plan (QAP).

Census Data: We ask that the Census Data for surrounding areas within a specific zip code be taken into consideration as opposed to the use of data from individual census tracts. Expanding the information gathered to include an entire zip code will allow all concerned a more comprehensive view of demographics and impact on a community as a whole.

Quantifiable Community Participation: Currently, applicants must be located within an HOA or Neighborhood Association in order for statements made on their behalf to qualify. We ask that proximity to developments be taken into consideration and Home Owner Associations as well as Neighborhood Associations within one linear mile of proposed developments be allowed a voice.

Thank you for your consideration,

Debby Thompson

President, Wells Branch Neighborhood Assn.

512-656-0654

This email has been checked for viruses by Avast antivirus software.
www.avast.com

(64) Wendell Dunlap, Mayor of Plainview,

OFFICE OF THE MAYOR

October 1, 2015

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, Texas 78711-3941

Dear Ms. Morales:

On behalf of the City of Plainview, I would like to express my support for the historic preservation section proposed in the 2016 Housing Tax Credit Program Qualified Allocation Plan. It would greatly benefit a community our size if historic rehabilitation projects were able to receive consideration for additional points in the housing tax credits application process.

The City of Plainview is home to one of the first Hilton Hotels ever built, with construction completed on June 4, 1929. This beautiful historic structure now sits vacant and deteriorating in our downtown. The hotel has been vacant since the mid-80's with no serious interest received in being redeveloped due to the substantial costs required. With this proposed QAP and the option to layer housing tax credits with other existing sources provides the much needed financial components to restore this structure to being an asset for our community once more instead of being a public nuisance.

The revitalization of the Hilton Hotel building has been a goal for the City of Plainview, Main Street, and the Downtown Association for many years and is part of our downtown plan. The benefits to downtown are numerous and include increased property tax revenue, synergistic business growth, the utilization of existing infrastructure for new households, and preserving an architectural gem for future generations.

As Mayor of Plainview, I respectfully request that you adopt the QAP as proposed.

Sincerely,

Wendell Dunlap
Mayor

(65) Christopher Fielder, Mayor of Leander

From: Chris Fielder
To: Teresa.Morales tdhca.state.tx.us
Subject: Proposed for the 2016 Housing Tax Credit year
Date: Thursday, October 15, 2015 5:27:48 PM

Dear Ms. Morales:

On behalf of the City of Leander, I would like to express my support for the historic preservation policy proposed for the 2016 Housing Tax Credit year.

The City of Leander would benefit greatly from the proposed concept. Currently we have an underutilized asset in our town. In the early 1900s the CC Mason Homestead Building building was once a grand facility full of life and and commerce. Layering housing tax credits with other existing sources provides the much needed financial components to restore the same vibrancy to our town today.

We have several other building in town that would benefit from this proposal.

As mayor of Leander, I respectfully request that you adopt the policy as proposed.

Sincerely,

Christopher Fielder

Mayor, City of Leander

(66) Roxanne Johnston, City of Big Spring

From:	Roxanne Johnston
To:	Teresa.Morales tdhca.state.tx.us
Cc:	"Terry Wegman"; "Debra Wegman"; "Teresa Darden"
Subject:	Historic Adaptive Reuse Points
Date:	Monday, October 05, 2015 1:52:22 PM

Good afternoon,

I am the City Planner for the City of Big Spring, located in Howard County, Texas. I support a recommendation for the TDHC, who has been given the responsibility, to increase the maximum points that Historic buildings can use towards tax credits in excess of 5 points.

I have been a planner for two Texas cities that have been working diligently on downtown revitalization with the limited resources they have and have visited several others. One of the most satisfying experiences as a planner is to see vacant historic buildings come back to life and attract additional people to downtown areas. I believe such tax credit points could prove to be a much needed incentive as a worthwhile tool in the proverbial economic planning toolbox in order to attract developers to our downtowns.

Thank you for your time and in considering the request for additional tax credit incentives above the current maximum of 5 points with regard to historic downtown structures.

Roxanne M. Johnston

City Planner

City of Big Spring

305 Johnson St.

Big Spring, TX 79720

Phone: 432-264-2319

Fax: 432-264-7024

rjohnston@mybigspring.com

(67) Tracy Cox, City of San Augustine

From:	San Augustine Main Street
To:	Teresa.Morales tdhca.state.tx.us
Subject:	reuse of large downtown buildings
Date:	Monday, October 05, 2015 11:58:24 AM
Attachments:	CityofSA (2).png SAMainSt1833.png

Texas Department of Housing and Community Affairs

Attn: Teresa Morales

P.O. Box 13941

Austin, Texas 78711-3941

Email: Teresa.Morales@tdhca.state.tx.us

Dear Ms. Morales,

We are glad to hear that preference will be given to the reuse of historic structures for housing tax credit projects. (SB 1316) As the department reviews the points system, we would like to encourage more points be added so that historic adaptive reuse projects are not shut down.

Thank you,

Tracy Cox

Main Street Manager

City of San Augustine

100 W. Columbia St. Rm. 301 B

San Augustine, Texas 75972

936-201-9798

sanaugustinemainstreet@gmail.com

Texas Main Street City

Junk in the Trunk --November 7

(68) Jason Weger, Cisco City Councilman

68

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

The citizens and the City of Cisco will benefit greatly from the proposed policy. The Laguna Hotel (aka Victor Hotel) is an underutilized asset and landmark in our downtown area. In the early 1900's, this beautiful building, as seen on the following page, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city.

Unfortunately, we haven't been able to say that in about twenty or so years. It has become, not only an eye sore to the downtown area and surrounding businesses, but a dangerous building to those walking near it and who have come to see this historical landmark. This building is listed as one of the Top Ten Most Endangered Historical Buildings in Texas.

Currently, we have experienced a shortage of available housing for those with moderate incomes such as single parents, young families, and the elderly. In fact, our economic development is hindered due to the housing shortage.

Layering housing tax credits with other existing sources provides the necessary financial components to restore the same vibrancy to this downtown historic landmark that is located within walking distance to other renovated historic treasures that are now restaurants, a coffee shop, and retail businesses.

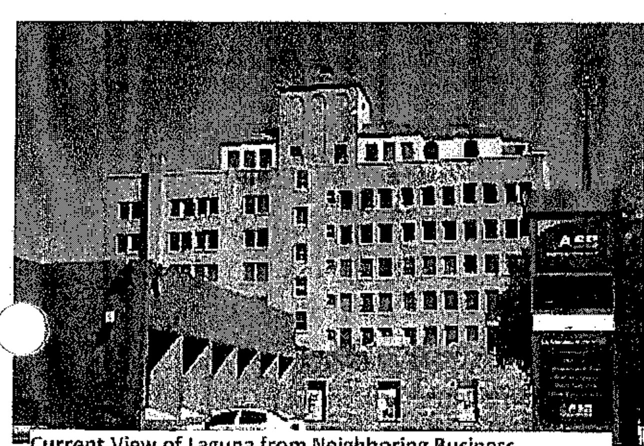
The revitalization of the Laguna Hotel has been a goal for the City of Cisco for many years and is part of our downtown plan. The benefits to the main street area and community are too many to count and include increased work force for local businesses, increased property tax revenue, synergistic business growth, the utilization of existing infrastructure for new households, and preserving one of the most beautifully designed architectural gems found in Cisco for future generations.

As councilmember of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Jason Weger
City Council Member, City of Cisco

Victor Hotel around 1920


Current View of Laguna from Neighboring Business

Early 1900's Laguna Hotel

Present Day Laguna Hotel

Present Day Laguna

(69) Tim Barton, Cisco ISD

69

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

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As a member of the Board of Trustees of the Cisco Independent School District, I respectfully request that you adopt the policy as proposed.

Sincerely,

Tim Barton

Tim Barton,
Member, Board of Trustees, Cisco Independent School District

(70) Suzonne Franks

70

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

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As the owner of The Spotted Zebra, I respectfully request that you adopt the policy as proposed.

Sincerely,

Suzanne Franks

Suzonne Franks
Owner, The Spotted Zebra

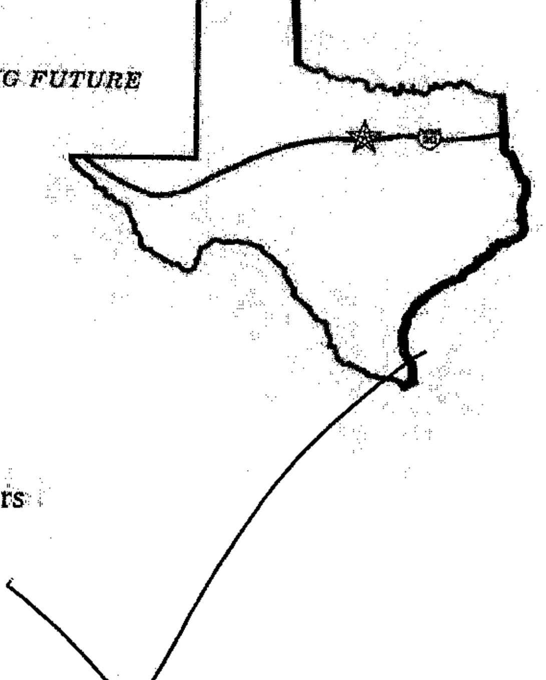
7

(71) James King, Mayor of Cisco

71

City of Cisco

WHERE A PROUD PAST GREETS A PROMISING FUTURE



October 2, 2015

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

The citizens and the City of Cisco will benefit greatly from the proposed policy. The Laguna Hotel (aka Victor Hotel) is an underutilized asset and landmark in our downtown area. In the early 1900's, this beautiful building, as seen in the enclosed photographs, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city.

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The revitalization of the Laguna Hotel has been a goal for the City of Cisco for many years and is part of our downtown plan. The benefits to the main street area and community are too

*500 CONRAD HILTON AVENUE * P.O. BOX 110 * CISCO, TEXAS 76437 * 254 / 442-2111*
FAX 254 / 442-3974

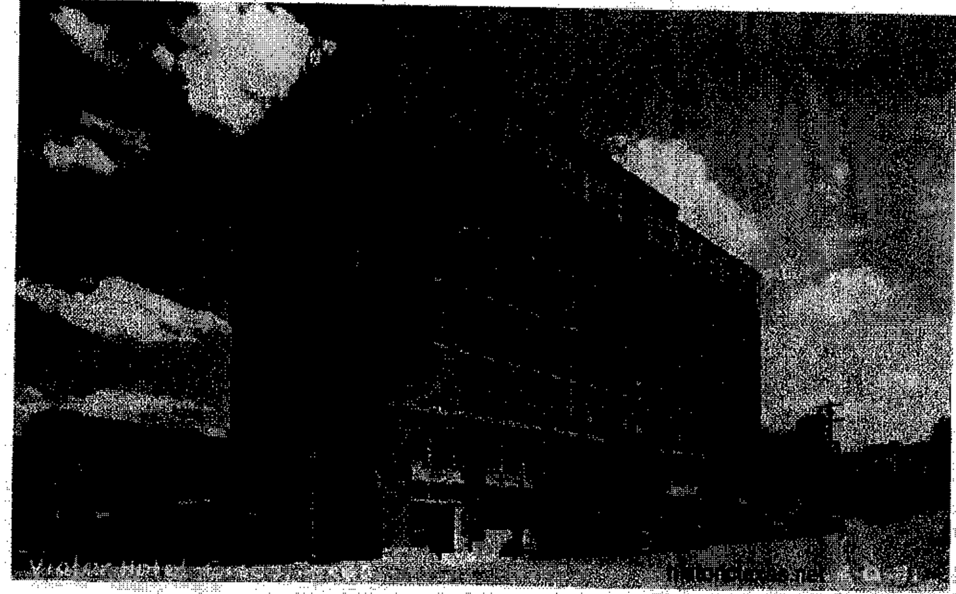
many to count and include increased work force for local businesses, increased property tax revenue, synergistic business growth, the utilization of existing infrastructure for new households, and preserving one of the most beautifully designed architectural gems found in Cisco for future generations.

As mayor of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

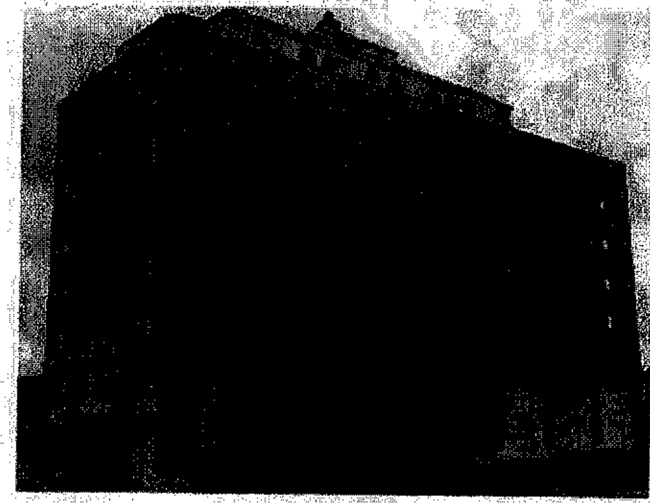
James King
Mayor,
City of Cisco, Texas

*500 CONRAD HILTON AVENUE * P.O. BOX 110 * CISCO, TEXAS 76437 * 254 / 442-2111*
FAX 254 / 442-3974

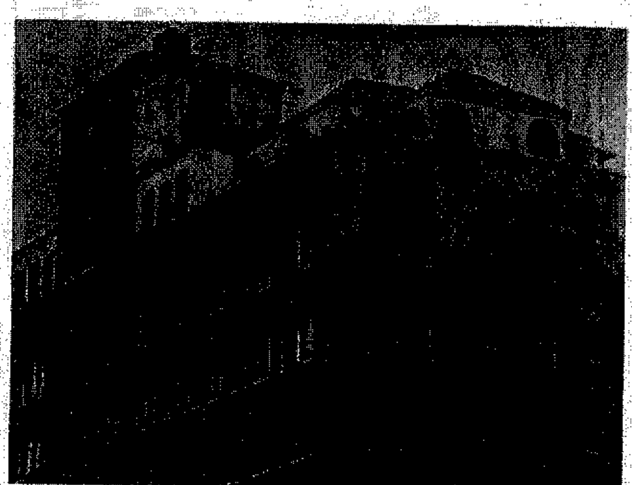


Early 1900's Laguna Hotel

Current View of Laguna from Neighboring Business



Present Day Laguna



Present Day Laguna Hotel

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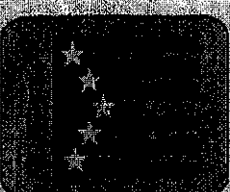
FAX 254 / 442-3974

(72) Cisco Economic Development Corporation

72



Cisco Development Corporation

A partner to help your business and improve Cisco

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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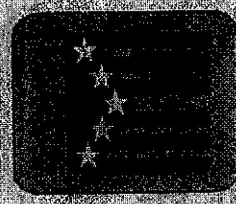
As a member of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

James Ramsay

James Ramsay
Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com



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Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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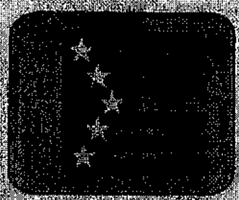
As Vice President of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Bill Kendall
Vice President, Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com



Cisco Development Corporation

A partner to help your business and improve Cisco

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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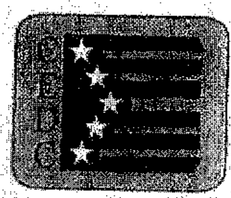
As President of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Ronnie Ledbetter,
President, Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com



Cisco Development Corporation

A partner to help your business and improve Cisco

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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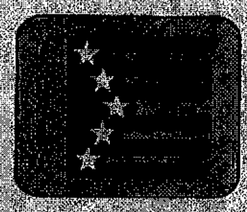
As a member of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Mike McClure
Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com



Cisco Development Corporation

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Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
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The citizens and the City of Cisco will benefit greatly from the proposed policy. The Laguna Hotel (aka Victor Hotel) is an underutilized asset and landmark in our downtown area. In the early 1900's, this beautiful building, as seen on the following page, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city.

Unfortunately, we haven't been able to say that in about twenty or so years. It has become, not only an eye sore to the downtown area and surrounding businesses, but a dangerous building to those walking near it and who have come to see this historical landmark. This building is listed as one of the Top Ten Most Endangered Historical Buildings in Texas.

Currently, we have experienced a shortage of available housing for those with moderate incomes such as single parents, young families, and the elderly. In fact, our economic development is hindered due to the housing shortage.

Layering housing tax credits with other existing sources provides the necessary financial components to restore the same vibrancy to this downtown historic landmark that is located within walking distance to other renovated historic treasures that are now restaurants, a coffee shop, and retail businesses.

The revitalization of the Laguna Hotel has been a goal for the City of Cisco for many years and is part of our downtown plan. The benefits to the main street area and community are too many to count and include increased work force for local businesses, increased property tax revenue, synergistic business growth, the utilization of existing infrastructure for new households, and preserving one of the most beautifully designed architectural gems found in Cisco for future generations.

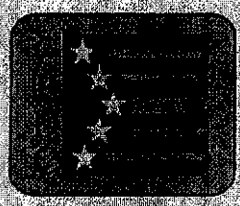
As Secretary/Treasurer of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Marcia Hale

Marcia Hale,
Secretary/Treasurer 4B, Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com



Cisco Development Corporation

A partner to help your business and improve Cisco

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

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The citizens and the City of Cisco will benefit greatly from the proposed policy. The Laguna Hotel (aka Victor Hotel) is an underutilized asset and landmark in our downtown area. In the early 1900's, this beautiful building, as seen on the following page, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city.

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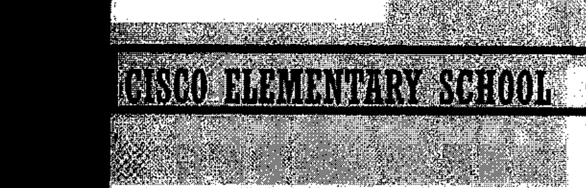
As Secretary/Treasurer of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Jody Bussey,
Secretary/Treasurer 4A, Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com



503 West 11th Street
Cisco, Texas 76437
Phone: 254-442-1219
Fax: 254-442-4836

Texas Department of Housing and Community Affairs
Teresa Morales
P. O. Box 13941
Austin, TX 78711-3941

Ms. Morales:

On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

The citizens and the City of Cisco will benefit greatly from the proposed policy. The Laguna Hotel (aka Victor Hotel) is an underutilized asset and landmark in our downtown area. In the early 1900's, this beautiful building, as seen on the following page, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city. I remember, as a child, going to a coffee shop that was located on the main floor with my grandfather. As a native of Cisco I would personally love to see this historic building restored.

Unfortunately, we haven't been able to say that in about twenty or so years. It has become, not only an eye sore to the downtown area and surrounding businesses, but a dangerous building to those walking near it and who have come to see this historical landmark. This building is listed as one of the Top Ten Most Endangered Historical Buildings in Texas.

Currently, we have experienced a shortage of available housing for those with moderate incomes such as single parents, young families, and the elderly. In fact, our economic development is hindered due to the housing shortage.

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As a member of the Board for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Sharon Wilcoxen

Sharon Wilcoxen
Cisco Economic Development Corporation

Cool Clear Water LLC
900 Conrad Hilton
Cisco, TX 76437
254-442-3131

October 2, 2015

Texas Department of Housing and Community Affairs
Teresa Morales
P. O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco, I would like to express my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year. This policy is needed for the City of Cisco and our citizens will benefit greatly from the proposed policy.

The Laguna Hotel, (aka Victor Hotel), is an under-utilized asset in our downtown area. In the early 1900's this beautiful building, as seen on the following page, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city. Located on the famous Bankhead Highway and being the tallest building in our city, this building was the most visible landmark for those coming to Cisco.

This building is listed as one of the Top Ten Most Endangered Historical Buildings in Texas. Unfortunately, it has become not only an eyesore to the downtown area and surrounding businesses, but a dangerous building to those walking near it and to those who come to see it.

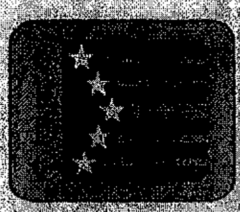
The revitalization of the Laguna Hotel has been a goal for the City of Cisco for many years and is a part of our downtown plan. The benefits to the main street area and community are numerous and include increased work force for local businesses, increased property tax revenue, synergistic business growth, the utilization of existing infrastructure for new households, and preserving for future generations one of the most beautifully designed architectural gems found in Cisco.

Currently, we have experienced a shortage of available housing for those with moderate incomes such as single parents, young families and the elderly. In fact, our economic development is hindered due to our housing shortage. Layering housing tax credits with other existing sources provides the necessary financial components to restore vibrancy to this downtown historic landmark. We are striving for a beautiful housing center located within walking distance of other renovated historic buildings, restaurants, a coffee shop, retail businesses, museums, and city offices.

As a member of the Board for the Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

Jane Nichols
Cisco Economic Development Corporation



Cisco Development Corporation

A partner to help your business and improve Cisco

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As Executive Director for Cisco Economic Development Corporation, I respectfully request that you adopt the policy as proposed.

Sincerely,

John Diers,
Executive Director, Cisco Economic Development Corporation

608 Conrad Hilton Ave. | Cisco, TX 76437 | 254.442.4200
Email: info@ciscodc.com | ciscodc.com

(73) Wilks Brothers, LLC

WILKS BROTHERS

73

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

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As the Executive Administrator of Wilks Brothers, LLC, I respectfully request that you adopt the policy as proposed.

Sincerely,

Staci Wilks,
Executive Administrator, Wilks Brothers, LLC

17010 IH-20 · CISCO, TEXAS 76437 · 817-850-3600

73

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

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As the Personal Controller of Wilks Brothers, LLC, I respectfully request that you adopt the policy as proposed.

Sincerely,

Pete Thielke

Pete Thielke
Personal Controller, Wilks Brothers, LLC

(74) Michael Cary, Prosperity Bank, Cisco

PROSPERITY BANK®

October 2, 2015

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As a member of the Board of Directors for the Cisco Chamber of Commerce, Board of Trustees for the Conrad Hilton Center and President of the Cisco Banking Center for Prosperity Bank, I respectfully request that you adopt the policy as proposed.

Sincerely,

Michael Cary

Michael Cary
Cisco Banking Center President Prosperity Bank
Member Board of Directors Cisco Chamber of Commerce and Board of Trustees Conrad Hilton Center

(75) Myrtle Wilks Community Center

#MG 75

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

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As mayor of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Levi Goode
Administrator, Myrtle Wilks Community Center

75

(76) Patrick Hoiby, Equify, LLC

#76

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As a President of Equify, LLC, I respectfully request that you adopt the policy as proposed.

Sincerely,

Patrick Hoiby
President, Equify, LLC

(77) Breckenridge Exploration Co., Inc.

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As a member of Breckenridge Explorations Company's Board of Directors, I respectfully request that you adopt the policy as proposed.

Sincerely,

Robert Early,
Member, Breckenridge Exploration Co., Inc. Board of Directors

Ph. 254.559.7566 Fax: 254.559.6337
2301 US Hwy 180 East • Breckenridge, TX 76424
P.O. Box 789

(78) Board of Trustees, Cisco ISD

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

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As a member of the Board of Trustees of the Cisco Independent School District, I respectfully request that you adopt the policy as proposed.

Sincerely,

Kenneth Preston,
Member, Board of Trustees, Cisco Independent School District

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As a member of the Board of Trustees of the Cisco Independent School District, I respectfully request that you adopt the policy as proposed.

Sincerely,

Sheila Johnson

Sheila Johnson,
Member, Board of Trustees, Cisco Independent School District

(79) Cisco Chief of Police

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

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As Police Chief of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Larry Weikel
City of Cisco, Chief of Police

(80) Tammy Osborne, City of Cisco

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As City Secretary of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Tammy Osborne

Tammy Osborne
City Secretary, City of Cisco

(81) Cisco Chamber of Commerce

81

FIRST FINANCIAL BANK N.A.

Member FDIC

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

The citizens and the City of Cisco will benefit greatly from the proposed policy. The Laguna Hotel (aka Victor Hotel) is an underutilized asset and landmark in our downtown area. In the early 1900's, this beautiful building, as seen on the following page, was a center of commerce with its large size, eight floors, fantastic spiral staircases, interesting artistic design, and glorious ballroom. This bold building gave a fantastic view of the Cisco scenic countryside and the bustling city.

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As President of the Cisco Chamber of Commerce, I respectfully request that you adopt the policy as proposed.

Sincerely,

Melanie Weatherly

Melanie Weatherly,
President, Cisco Chamber of Commerce

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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Sincerely,

Kathy Conring

Kathy Conring
Board Member, Cisco Chamber of Commerce

TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS
TERESA MORALES
P.O. BOX 13941
AUSTIN, TX 78711-3941

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As a Cisco Community Leader, I respectfully request that you adopt the policy as proposed.

Sincerely,

Brittney Smith
Executive Director, Cisco Chamber of Commerce

WWW.CISCOCHAMBEROFCOMMERCE.COM
309 CONRAD HILTON BLVD, CISCO, TX 76437
254-442-2537

(82) Phil Green, Cisco City Councilman

Green Realty Group, LLC
117 Golden Kinglet
Cisco, Texas 76437

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As a City Councilmen of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Phil Green
City Council Member, City of Cisco

(83) Keep Cisco Beautiful Organization

Keep Cisco Beautiful

PO Box 670

Cisco TX 76437

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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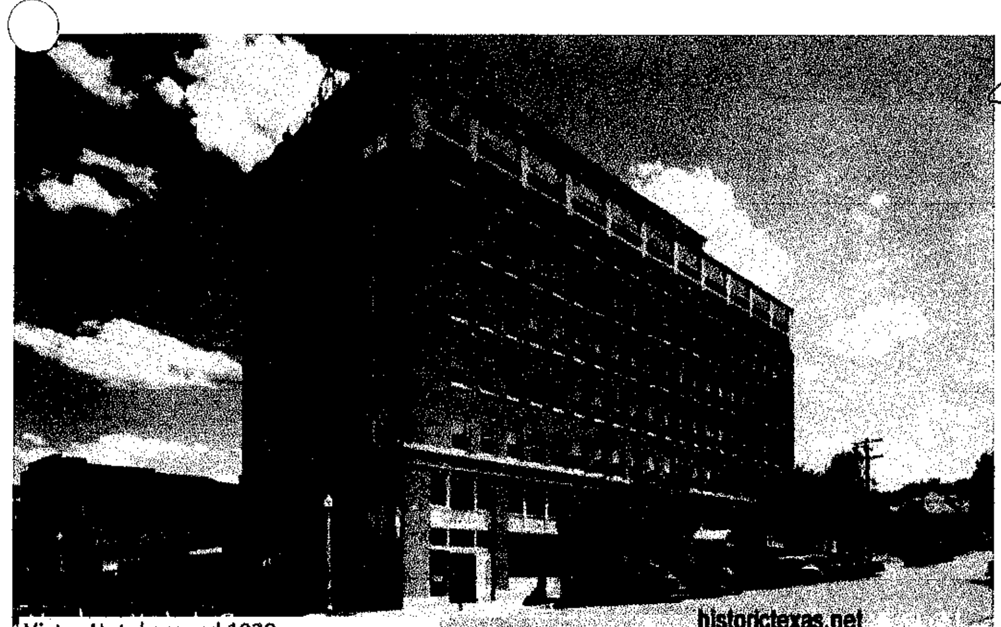
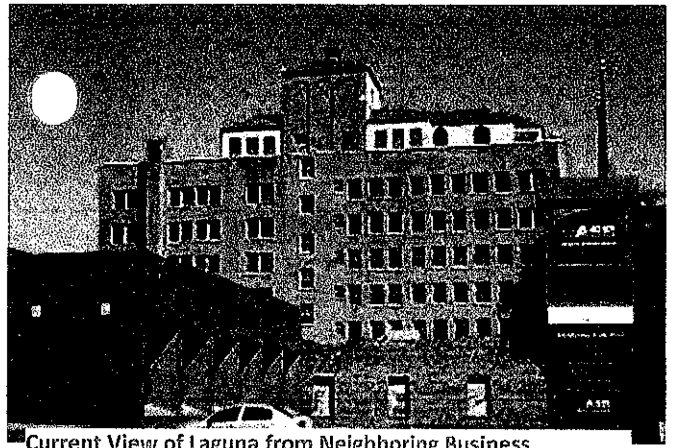
As a member of the Board of Trustees of the Cisco Independent School District, I respectfully request that you adopt the policy as proposed.

Sincerely,

Janelle Campbell,
Keep Cisco Beautiful
Organization



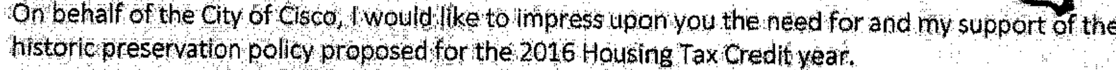
Victor Hotel around 1920


Current View of Laguna from Neighboring Business

Early 1900's Laguna Hotel

(84) Peggy Ledbetter, Interim Cisco City Manager

City of Cisco



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As Interim City Manager of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Peggy Ledbetter

Peggy Ledbetter
Interim City Manager, City of Cisco

500 CONRAD HILTON AVENUE • P.O. BOX 110 • CISCO, TEXAS 76437 • 254/442-2111
FAX 254/442-3974

(85) Tammy Douglas, Cisco City Councilwoman

85

October 2, 2015

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As City Council Member, Place V, of the City of Cisco, I respectfully request that you adopt the policy as proposed.

Sincerely,

Tammy Douglas

Tammy Douglas
City Council Member, Place V, City of Cisco

85

(86) Matt Johnson, Cisco Post Master

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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As a Post Master in Cisco, Texas, I respectfully request that you adopt the policy as proposed.

Sincerely,

Matt Johnson

Matt Johnson,
Cisco Post Master

(87) Russell Thomason, Criminal District Attorney

87

RUSSELL D. THOMASON

91ST JUDICIAL DISTRICT
CRIMINAL DISTRICT ATTORNEY

100 WEST MAIN, SUITE 204
EASTLAND, TEXAS 76448

254-629-2659
FAX - 254-629-3361

October 1, 2015

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Morales:

On behalf of the City of Cisco and Eastland County, I would like to impress upon you the need for and my support of the historic preservation policy proposed for the 2016 Housing Tax Credit year.

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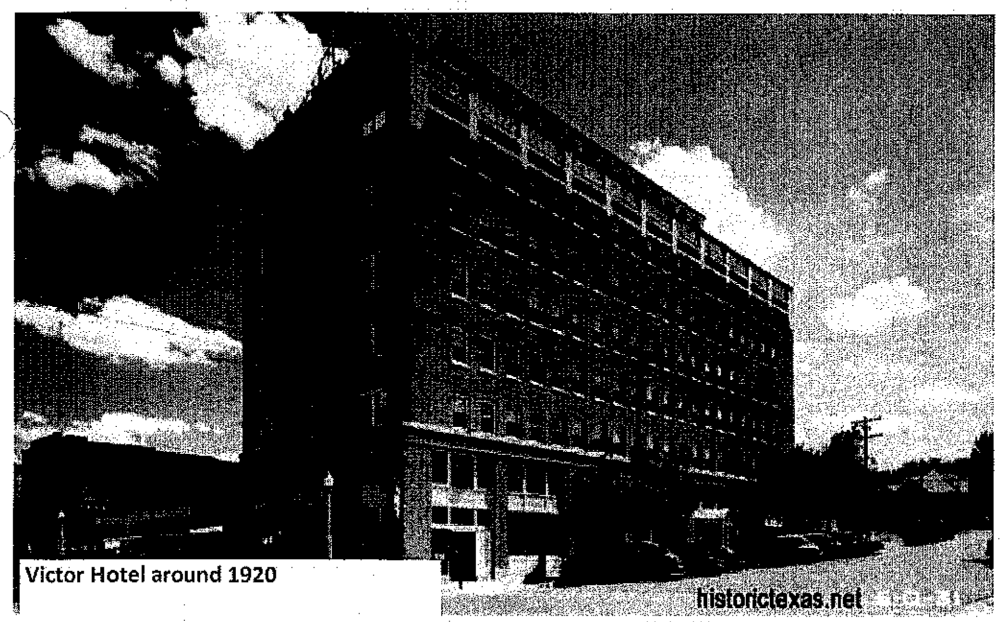
As a resident of and also an elected official serving Cisco's citizens, I respectfully request that you adopt the policy as proposed.

Sincerely,

Russell D. Thomason



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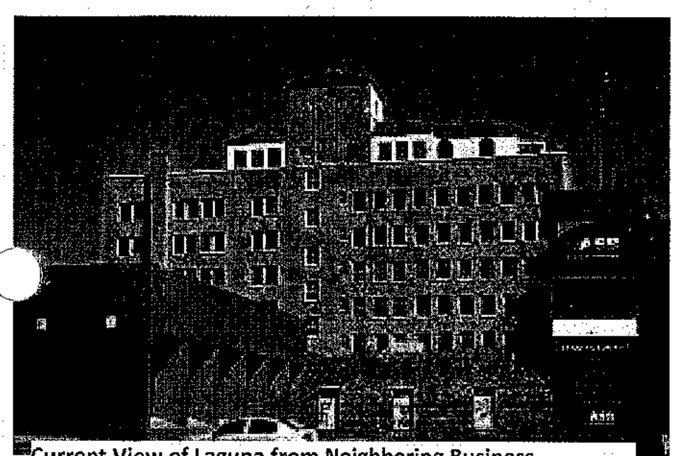
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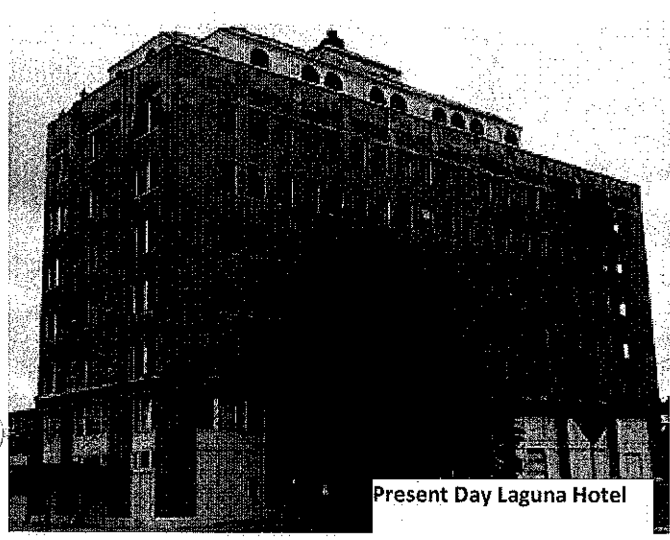
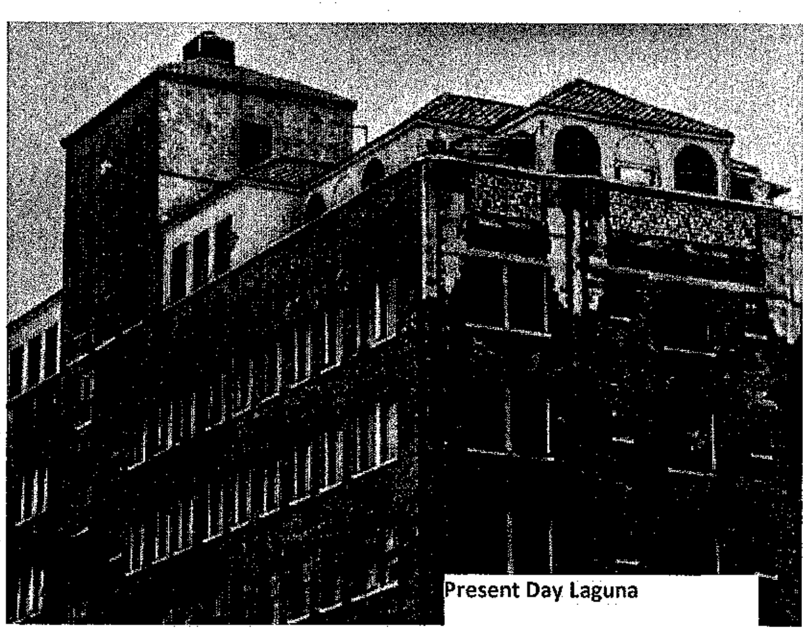

Present Day Laguna Hotel


Present Day Laguna

(88) Dennis Campbell, Cisco City Councilman

PO BOX 670/613 CONRAD HILTON AVENUE
CISCO TX 76437
254-442-3705
10/2/2015

Texas Department of Housing and Community Affairs
Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

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Sincerely,

Dennis Campbell
City Council Member,
City of Cisco

(89) Columbia Residential

On behalf of Columbia Residential, I would like to thank you for this opportunity to offer comments on the 2016 Qualified Allocation Plan (QAP). Our comments focus on Educational Excellence points and Concerted Revitalization Plans.

Educational Excellence:
We are involved in a major revitalization effort at our Fort Worth development, Renaissance Square. The first phase targets families and received an award of credits in the 2015 round. Although the phase we plan to submit in 2016 is for seniors, we still believe that the QAP should reward the type of educational efforts that are taking place at Renaissance through Uplift Mighty Prep.

We believe that points should be awarded to charter schools that are being developed as part of a holistic approach to neighborhood revitalization. The following should be considered:

- Children living at the proposed development must be able to attend thecharter school;
- Because the charter school may not yet have offer – and therefore not have data on – all grades that will be in place when the project is placed in service, the district rating is more reflective and should be used for purposes of scoring.

We are also concerned that senior deals are still eligible to receive Educational Excellence points. Although points are now available for senior deals under the Aging in Place section, a senior deal located in an area with high performing schools in grades K through 12 may receive five points. As a result, they will forgo the three points available for Aging in Place and will likely not incorporate design and service features specific to elderly populations. In addition, senior – not family – deals will continue to be developed in areas with good schools, because seniors deals are more "acceptable" to those communities.

Concerted Revitalization Plans:
Although the language regarding Concerted Revitalization Plans has been tightened, we believe it is still possible for applicants to orchestrate the development of revitalization plans for the sole purpose of receiving these points. We would like to make to make the following suggestions regarding this issue:

- Only revitalization plans that show true community input should be eligible for points. Simply showing evidence that notice has been given to the public does not constitute public input. If no one in the community is interested in providing comments, it is unlikely that the plan represents a legitimate need or effort to revitalize the area.;
- Plans that are less than six months old should not be accepted. In order to qualify, plans must have been started at least six months prior to the application deadline.
- There should be no involvement on the part of any project team member in the formulation of Concerted Revitalization Plans. Plans must be developed at the direction of the local government and without involvement of the applicant.

If you have any questions regarding our comments, please do hesitate to contact me.

(90) Jill Rafferty, Studewood Community Initiative

October 13, 2015

Ms. Teresa Gonzales
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: 2016 Texas Multifamily Rules and the Qualified Application Plan (QAP)

The Texas Housing and Community Affairs Department has requested comments regarding the proposed 2016 QAP. Upon review of comments submitted for previous QAPS, it appears recommendations submitted by City and County Planning Departments and non-profit housing organizations provide an opportunity to change existing QAP rules in order to facilitate the approval of future projects, and not to develop consistent application of fair housing guidelines.

Consider the following:

The City of Houston Planning and Development Department (HCDD) made three recommendations to the 2014 QAP. Each of the "recommendations" the City made affected the total scoring points and ultimate approval of projects submitted for 2014 grant funds. One of the recommendations made requested that Disaster Recovery Areas be equivalently treated in points as designated Revitalization areas. A justification was made that the supposed community support measured by community outreach efforts made by some city -paid housing consultants.

My neighborhood is one such designated disaster recovery area. Consultants held some meetings beginning in 2012. An organization that had an office in our area was chosen to be the "organization of record" for community outreach purposes. It consisted of people who did not live here and did not meet the definition stated in State of Texas Government Code 2306.004(23-a).

The true plans the City had for our area was not revealed until May of 2015. In a meeting, we were told a high-density low-income housing project was going to be built, and nothing could be done about it. This will have a disparate impact on our community and to future tenants of the project. Currently, our neighborhood is a low-income, minority community with high drug and prostitution activity and low-performing schools. Does all this sound familiar?

According to the pattern of alterations of your previous QAP guidelines, proposed projects now require little objective analysis. In the last several years TDHCA, guidelines have been modified to eliminate the use of algorithms or other objective data mining analysis tools for review of proposed sites.

How many Supreme Court cases and useless attorney fees does it take for the TDHCA to finally formulate consistent fair lending guides, rather than pandering to the momentary needs of project developers?

Regards,

Jill Rafferty
Studewood Community Initiative
4305 Oxford Street
Houston, TX 77022

(91) Monica Washburn

Doug Gurkin
1805 Lakehurst Road
Spicewood, TX 78669
(512) 264-1020 office
(512) 681-7977 fax
(512) 423-0521 mobile

Monica Washington
902 Winding Creek
Round Rock, TX 78665
(512) 663-3696 office
(512) 221-1150 fax

George Schmidt
34 Lone Oak Trail
Sunset Valley, TX 78745
(512) 680-1600 office
(512) 233-0860 fax

October 15, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: 2016 QAP Recommendations

Dear Chairman Oxer and Members of the Board:

We respectfully recommend utilizing employment to measure high opportunity for At Risk developments. We believe that the most important geographical asset for persons seeking upward mobility in an existing development is access to employment. Please consider substituting access to jobs in lieu of the income criteria. Other states like Georgia use the US Census OnTheMap tool to objectively define income opportunities. With a few clicks, the quantity of jobs by income level within a specified radius is shown. We recommend that the Department assess high opportunity in At-Risk deals by measuring the number of jobs earning $3,333 per month or less that are within a 1 mile radius and that quantity must exceed the number of HTC units 10 times.

Sample text below.

> QAP §11.9.Competitive HTC Selection Criteria (c)(4) (D) For At-Risk Developments, if the proposed Development Site is located within an 1.0 mile radius area containing jobs earning up to $3,333 of at least 10 times the number of HTC units as reported by the US Census OnTheMap an Application may qualify to receive up to seven (7) points.

Sincerely,

Monica Washington

Monica Washington

(92) State Representative Ryan Guillen

October 15, 2015

The Honorable Chairman Oxer, and
Members of the TDHCA Board
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
RE: 811 Points, QAP Section: Tenant Populations with Special Housing Needs

Chairman Oxer and Members of the TDHCA Board:

I am writing to express the concerns of rural communities and developers who provide affordable housing in those communities regarding a proposed change to the 2016 Qualified Allocation Plan (QAP).

Specifically, there is a concern about the provision in Section 11.9 (c)(7)(A) of the QAP, which would award additional points on the 2016 9% housing tax credit applications to developers who operate in 811 service regions. While intended to incentivize development in the 811 service regions, which are urban areas of the state, the new rule would create an unfair competitive advantage for these urban developers in applications for non-811 service regions. These same points would not be available to rural developers who do not own units in these regions.

If authorized, this rule would create a strong disadvantage to developers within my district and other rural areas across the state. In fact, out of the 26 urban and rural regions of Texas, only 7 regions qualify for 811 services. This means that developers who have been fortunate enough to build portfolios in these 7 regions, will now have a scoring advantage when they compete in any of the 26 regions. Meanwhile, developers who have built their businesses in the 19 non-811 regions will now find themselves unable to compete. In summary, the rule will create a privileged group of developers from these 7 regions to dominate all regions in the state.

I have been involved in the Low Income Housing Tax Credit program for years and have supported affordable housing in communities all over the South Texas. My experience with the program has been that it treats developers in all regions equally. For the aforementioned reasons, and in the interest of upholding the spirit of the program, I urge the board to not approve this unfair outside advantage in rural Texas.

Through conversations with developers and the TAAHC, I believe there may be other ways to increase use of the available federal funds for housing elderly and other qualified families without destabilizing an excellent program that provides low income house to all areas of the state.

I appreciate your consideration and careful attention to this matter. Please do not hesitate to call on me if I can ever be of service.

Yours in Public Service,

Ryan Guillen
State Representative

CC: Timothy Irvine, TDHCA Executive Director
Marni Holloway, Director of Multifamily Finance

7b

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on orders adopting the repeal of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and orders adopting the new Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding;

WHEREAS, changes have been proposed that improve the efficiency of the funding sources involved; and

WHEREAS, the proposed repeal and proposed new Chapter 10 were published in the September 25, 2015, issue of the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 10 Subchapter A, General Information and Definitions, Subchapter B, Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions; and the final order adopting the proposed new 10 TAC Chapter 10, Subchapters A, B, C, and G concerning Uniform Multifamily Rules, together with the preambles presented to this meeting, are approved for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and new Uniform Multifamily Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 10 regarding the Uniform Multifamily Rules at the September 11, 2015, Board meeting to be published in the *Texas Register* for

public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each comment.

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Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions without changes to the proposed text as published in the September 25, 2015, of the *Texas Register* (40 TexReg 6395) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.1. Purpose.
§10.2. General.
§10.3. Definitions.
§10.4. Program Dates.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6404) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.101. Site and Development Requirements and Restrictions.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6413) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.201. Procedural Requirements for Application Submission.
§10.202. Ineligible Applicants and Applications.
§10.203. Public Notifications.
§10.204. Required Documentation for Application Submission.
§10.205. Required Third Party Reports.
§10.206. Board Decisions.
§10.207. Waiver of Rules for Applications.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions, without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6462) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.901. Fee Schedule.
§10.902. Appeals Process.
§10.903. Adherence to Obligations.
§10.904. Alternative Dispute Resolution (ADR) Policy.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 – 10.4 concerning General Information and Definitions. Section 10.3 are adopted with changes to the text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6395). Sections 10.1 – 10.2 and 10.4 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (3) Texas Affiliation of Affordable Housing Providers, (7) Rural Rental Housing Association of Texas, (22) Cynthia Bast, Lock Lord, (32) Texas Appleseed/Texas Low Income Housing Information Service, (34) Barry Palmer, Coats Rose.

1. §10.3 – Subchapter A – Definitions – Elderly Development (3), (7), (34)
COMMENT SUMMARY: Commenter (3), (7) requested clarification on why these definitions are necessary especially considering the sensitivity surrounding it by cities and other government entities. Commenter (7) requested similar clarification, particularly as they relate to Project Based Section 8 and USDA 515 properties and further stated that the definition changes are seen as detrimental to some elderly developments and recommended the elderly definition from the 2015 rules be reinstated.

Commenter (34) asserted the definition for Elderly Preference Development appears to extend to any housing that has HUD or certain other federal funding, regardless of whether the developer's intent is to give a preference to the elderly. Commenter (34) requested clarification as to whether this was a correct interpretation and if not, requested the definition be appropriately modified.

STAFF RESPONSE: In response to the commenters, the definition for an elderly development was modified in response to HUD guidance published on July 21, 2015, clarifying how it treats certain age-restricted developments under the Fair Housing Act. The delineation between an Elderly Limitation development and an Elderly Preference development comes down to whether it qualifies for an exemption under the Housing for Older Persons Act ("HOPA") or not. A property receiving HUD funding as described in the HUD guidance and certain other types of federal assistance, is a development subject to an Elderly Preference and does not qualify for a HOPA exemption. These developments must lease to other populations, including in many cases elderly households with children, and must be developed and operated in a manner that will enable it to serve a reasonably foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities. A copy of the HUD guidance can be found in the Department's September 3, 2015, Board materials on its website. In response to

commenter (34) the Department is making this clarification to comply with and not conflict with federal requirements. The matter of intent of the developer is best evidenced in the language of the agreements executed by the developer.

Staff does not recommend any changes based on these comments.

2. §10.3 – Subchapter A – New Definition – Placed in Service (3), (34)

COMMENT SUMMARY: Commenter (3), (34) requested this new definition be added and that it be consistent with the Section 42 provision, which allows a building to be placed in service if only one unit in the building has received a certificate of occupancy. Commenter (3) requested the Department's carryover documentation be modified for consistency with federal regulation.

STAFF RESPONSE: In response to the commenters, creating this new definition would not constitute a logical outgrowth that would allow a reasonable opportunity for public comment prior to the adoption of this rule. Moreover, staff does not believe such definition is necessary at this time as the Department has always accepted the guidance provided in Revenue Rulings and IRS Form 8609 Instructions to allow at least one unit in a building to meet the placed in service requirement when necessary. The requirement in the Carryover for all units to be placed in service provides for the full 15-year term of the initial compliance period for affordability to serve the prospective tenants under the program. Considerations for units available for lease in the year following the placed in service year could require modifications and extensions to the affordability period(s) in the LURA. The language in the 2015 Carryover has been modified to reflect "The Owner hereby certifies that each building for which this allocation is made will be placed in service no later than December 31, 2017, and such placement in service shall meet the requirements of the Internal Revenue Service."

Staff does not recommend any changes based on these comments.

3. §10.3 – Subchapter A – Definitions – Qualified Purchaser (22)

COMMENT SUMMARY: Commenter (22) indicated that the above referenced term is only used twice, both under §10.408 regarding qualified contracts and further expressed support for the definition and suggested it be used more consistently, especially in the ownership transfer section of Subchapter E.

STAFF RESPONSE: Commenter (22) did not provide recommended changes to the ownership transfer section of Subchapter E that incorporated use of the Qualified Purchaser term.

Staff does not recommend any changes based on these comments.

4. §10.3 – Subchapter A – Definitions –Right of First Refusal (22)

COMMENT SUMMARY: Commenter (22) indicated that HB 3576, relating to entities that can acquire under the Right of First Refusal process has been expanded to include any entity permitted under §42(i)(7)(B) of the Code and any entity controlled by such a qualified entity. Commenter (22), on that basis, recommended use of the term "Qualified Entity" to be consistent with statute and that if such change is made then the reference under the above mentioned definition to a Qualified Nonprofit Organization or tenant organization should instead refer to Qualified Entity.

STAFF RESPONSE: Staff agrees with the modifications proposed by the commenter and has made the changes accordingly to comply with the recently amended statute.

5. §10.3 – Subchapter A – Definitions –Reconstruction (32)
COMMENT SUMMARY: Commenter (32) encouraged the definition be modified to allow reconstruction of an equal number of units on a new site just as it has under the At-Risk set-aside in the QAP and also suggested that the undesirable site features and undesirable neighborhood characteristics would need to cite the developments that would not qualify.

STAFF RESPONSE: At-Risk developments have restrictions and/or funding that continues to be preserved with the redevelopment of the units. In instances where there are not existing restrictions the re-development of the units could still occur and be considered new construction for purposes of the rules and therefore any undesirable site features and/or undesirable neighborhood characteristics that may be applicable to the new site would still apply.

Staff does not recommend any changes based on these comments.

6. §10.3 – Subchapter A – Definitions –Rural Area (7)
COMMENT SUMMARY: Commenter (7) requested clarification that USDA 515 projects originally built in qualified rural areas will continue to qualify as rural properties under the USDA set-aside for preservation purposes, provided the project retains the USDA 515, 514/516 funding.

STAFF RESPONSE: An existing USDA 515 development will be eligible for the USDA Set-Aside regardless of whether the area is designated as urban or rural. Staff notes that no changes were made to this definition other than a reference to the process by which a municipality can request a rural designation in response to the passage of H.B. 74 during the 84th legislative session.

Staff does not recommend any changes based on these comments.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101 concerning Site and Development Restrictions and Requirements, with changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6405).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (1) Foundation Communities, (3) Texas Affiliation of Affordable Housing Providers, (4) Alyssa Carpenter, (5) Palladium USA, (6) Chris Boone, City of Beaumont, (21) Structure Development, (22) Cynthia Bast, Locke Lord, (23) New Hope Housing, (24) Mary Henderson, (28) Arx Advantage, LLC, (30) Housing Lab by BETCO, (31) Marque Real Estate Consultants, (32) Texas Appleseed/Texas Low Income Housing Information Service, (34) Barry Palmer, Coats Rose, (36) Texas Coalition of Affordable Developers, (38) National Housing Trust, (43) Kim Schwimmer, (45) Pedcor Investments, (49) National Church Residences.

7. §10.101(a)(2) – Subchapter B – Mandatory Community Assets (3), (4), (5), (21), (22), (24), (28), (30), (43), (44), (45), (49)

COMMENT SUMMARY: Commenter (22) stated the new parenthetical under subparagraph (D) seemed odd, without meaningful purpose and suggested it be removed because some small retail establishments understandably require that minor children must be accompanied by an adult.

Commenter (22) requested clarification for those assets listed under subparagraph (L), specifically, whether the community organization needed to have its own physical facility, like a meeting lodge or if the Kiwanis or Rotary Club meets at a local restaurant whether that would then qualify the application to receive points under both subparagraphs (F) and (L)?

Commenter (22) requested clarification as to whether subparagraph (N) could include retail postal service establishments like a FedEx/Kinkos.

Commenter (3), (4), (5), (24), (28), (30), (43), (44) requested that religious institutions be reinstated in the list of community assets not only because of the spiritual and emotional needs of its members, but because of the supportive public services they provide to the community including, day care, meals on wheels, counseling, food pantries, seminars on health and finances and emergency funds for items such as rent, utilities, medical expenses or car repairs.

Commenter (4) requested dentistry medical offices, optometry medical offices and physician offices that are not general practice be reinstated to the list of community assets. Commenter (4) argued that the residents of HTC developments should be receiving regular dental and optometry care.

Commenter (21) asserted that schools should count as an asset for elderly limitation developments because of the volunteer opportunities they provide, in addition to open space offered for recreation, fitness and social interaction; they are places to hold community meetings and even vote.

Commenter (45), while they believed it was appropriate to remove proximity to a grocery store, pharmacy and urgent care facility as a threshold item, still believed it to be appropriate to single out certain amenities as being more important to tenants than others. Commenter (45) proposed the following modification to this section on that basis:

> "**(2) Mandatory Community Assets.** Development Sites must be located within an appropriate distance of community assets described in subparagraph (B) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) – (iii) of this subparagraph. ~~one mile radius (two-mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) – (S) of this paragraph. Supportive Housing Developments located in an Urban Area must meet the requirement in subparagraph (S) of this paragraph.~~ Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or be under active construction, post pad (*e.g.* framing the structure) by the date the Application is submitted:
>
> (i) New Construction in an Urban Area must qualify for eight (8) points;
> (ii) New Construction in a Rural Area must qualify for six (6) points;
> (iii) Rehabilitation Development (in either Urban or Rural areas) must qualify for five (5) points.
>
> (B) The community assets and respective point values are set out in clauses (i) – (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population or in an Urban or Rural area.
>
> (i) within one mile of full service grocery store (3 points);
> (ii) within two miles of a full service grocery store (2 points);
> (iii) For Applications proposing to serve the General Population, within three miles of a full service grocery store (1 point);
> (iv) within one mile of a pharmacy (3 points);
> (v) within two miles of a pharmacy (2 points);
> (vi) within three miles of a pharmacy (1 point);
> (vii) within one mile of an urgent care facility (3 points);
> (viii) within two miles of an urgent care facility (2 points);
> (ix) within three miles of an urgent care facility (1 point);
> (x) for Applications in a Rural Area, within two miles of a public school (1 point);
> (xi) for Applications proposing to serve the General population, within ½ mile of a public school (2 points);
> (xii) within one mile of a public school (1 point);

(xiii) for Applications proposing to be an Elderly Development, within one mile of a senior center accessible to the general public (2 points);
(xiv) within ½ mile of a designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation does not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify (1 point);
(xv) For Applications in an Urban Area, within one mile, and for Applications in a Rural Area, within two miles of any of the community assets listed in subclauses (I) – (XIV) of this clause (1 point):
(I) convenience store/mini-market;
(II) department or retail merchandise store;
(III) bank/credit union;
(IV) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);
(V) indoor public recreation facilities, such as, community centers and libraries accessible to the general public;
(VI) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;
(VII) medical offices (physician, dentistry, optometry) or hospital/medical clinic;
(VIII) religious institutions;
(IX) community, civic or service organizations, such as Kiwanis or Rotary Club;
(X) post office;
(XI) city hall;
(XII) county courthouse;
(XIII) fire station; or
(XIV) police station.

STAFF RESPONSE: In response to commenter (22) staff modified option (D) to provide additional clarification on types of retail that would not be appropriate under this item. With respect to community, civic or service organizations that hold their meetings at a restaurant, staff notes that the opening paragraph of this section states that the assets do not need to be in separate facilities to be considered for points; therefore, this could conceivably count for points under (F) and (L). However, in holding meetings at a restaurant the organization would need to have some regular and/or permanent presence there in the form of signage reflecting the regular meeting times, a lease, or other appropriate documentation that reflects a regular presence. Staff does not believe that a FedEx or Kinkos would qualify for points as a post office; however, could technically be considered retail.

In response to commenters (3), (4), (5), (24), (28), (30), (43), (44), staff believes that this could be incorporated into an existing community asset and has modified the item accordingly:

> "(L) community, civic or service organizations that provide regular and reoccurring services available to the entire community (this could include religious organizations or organizations like a ~~, such as~~ Kiwanis or Rotary Club);"

In response to commenter (4) staff included dentist and optometrist under the medical office option.

In response to commenter (21) staff agrees that services provided at public schools could be considered a community asset, regardless of the population served, and has modified this option accordingly.

In response to commenter (45), staff appreciates the suggested modification by which various community assets may be considered. Staff believes that the proposed rule more closely follows the policies and priorities of the Board than the commenter's proposed changes, and that the extent of the nature and scope of commenters proposed changes would require renewing the rule-making process and re-publication prior to adoption.

8. §10.101(a)(3) – Subchapter B – Undesirable Site Features (4), (6), (32)

COMMENT SUMMARY: Commenter (32) indicated that the distances between a site and the undesirable land uses relating to junkyards, heavy industrial and landfills are inadequate to protect tenants from harm and further asserted that the potential harm from these site uses is far greater than that of a sexually-oriented business, yet all need to be more than 300 ft from the development site. Moreover, commenter (32) stated that the 500 ft distance to a manufacturing or fuel storage facility is unacceptably small considering a fuel tank explosion would impact an area much larger and airborne emissions from manufacturing plants would also spread beyond the 500 ft radius.

Commenter (32) expressed concern regarding the reduction in distance between a development site and an active railroad track to 100 feet considering that a commuter train derailment has the potential to cause damage well beyond this. Commenter (32) believed that trains carrying hazardous materials present an even greater risk, including crude oil, and the risk of oil spills.

Commenter (4) argued that the modification to subparagraph (D) regarding "capable of refining" makes the item further reaching and requested clarification as to why the 2 mile limitation was chosen and for what purpose because it redlines significant portions of places, such as Texas City and La Marque for no apparent reason. Commenter (4) further asserted that if the concern was explosion risk, then a more appropriate solution would be to require HUD blast zone calculations and recommended the following modification:

> "(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily unless the Applicant provides evidence of HUD blast zone calculations based on the distance to refinery features and is located outside such blast zone and/or has proposed appropriate remediation;"

Similarly, commenter (6) expressed concern over the limitation in subparagraph (D) and requested the distance be modified from 2 miles to 1.5 miles considering the extent of the petro-chemical and industrial base of the economy and that if not changed it would preclude much of their downtown from being re-developed.

STAFF RESPONSE: In response to commenter (32) regarding distances to certain undesirable site features relative to others, concerns were raised; however, no specific or supported alternative distances were recommended. In evaluating these comments in conjunction with those from commenter (4), (6) staff believes there can be changes to this section that defer to regulations already in place, appropriate distances relative to housing and appropriate mitigation as may be applicable in the future.

9. §10.101(a)(4) – Subchapter B – Undesirable Neighborhood Characteristics (1), (3), (21), (22), (23), (30), (31), (32), (34), (35), (49), (51)

COMMENT SUMMARY: Commenter (1), (23), (49), (51) expressed concern over the use of neighborhoodscout.com by which to base policy decisions considering its proprietary software and therefore unknown as to how it collects, analyzes and reports data across a city. Because of concerns over inaccurate data commenter (1), (23), (34), (49), (51) requested the Department not rely on use of this website for its multifamily programs and commenter (23) further indicated that the subscription service is costly at $40/month. Commenter (34) requested the language used in with respect to crime in the 2015 rules be used instead because it at least provided alternatives that could be used to counter that of neighborhoodscout.com. Commenter (3), (23) suggested that because neighborhoodscout.com provides inconsistent results, applicants should have the option of obtaining statistics directly from the police department and only in instances where such statistics are difficult then neighborhoodscout.com can be used. Commenter (3), (23), (35), (49) recommended the following modification:

> "(ii) The Development Site is located ~~in a census tract or within 1,000 feet of any census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com."

Commenter (21) offered similar recommended language as noted below:

> "(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com or other local-data source such as precinct reports."

Commenter (3), (31), (34) recommended section (iii) regarding blighted structures be deleted on the basis that the concept of blight is too subjective to administer in a consistent way. Commenter (31), (34) further noted that this criteria may result in the ineligibility of sites in high opportunity areas or revitalization areas that are rapidly improving simply due to the presence of a de minimis number of blighted structures. Commenter (35) also requested the blight restriction be removed on the basis that bad housing conditions are a reason to invest in an area and that the Legislature affirmed that as a priority of the state through creation of the At-Risk set-aside. Commenter (35) further asserted that consistent with the Supreme Court decision, the Department may make awards in neighborhoods when there is a valid governmental interest for those allocation decisions and that ameliorating blight and bad housing conditions is a valid, and perhaps the best, according to commenter (35), justifications for investing in a neighborhood.

Commenter (3), (30), (31), (34), (49), (51) suggested section (iv) regarding schools that have not Met Standard be deleted on the basis that certain school districts in larger urban areas struggle to meet the new standards because they are indeed new standards. Commenter (3), (31), (34) further asserted that while the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff. Commenter (30) inquired as to what actions, documentation and timelines would be acceptable submissions by the applicant to mitigate schools that do not have the Met Standard rating and provided as an example, if TEA and/or the school in question shared what their plan of action is bringing the rating up to Met Standard and it will take five years to accomplish most of the outlined

actions in the plan, would that be acceptable to resolve the issue, or whether the mitigation plan have to resolve all issues by the Placed in Service date.

Commenter (23), (49), (51) similarly requested that schools that do not achieve the Met Standard rating be removed, or at least take into account supportive housing developments that only lease to adults, who have no children with need or use for higher performing schools. Commenter (23) requested the following modification:

> "(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency…. Development Sites subject to an Elderly Limitation or Supportive Housing are ~~is~~ considered exempt and do~~does~~ not have to disclose the presence of this characteristic."

Commenter (49), (51) recommended that, at a minimum, the elderly exclusion should be for all elderly developments not just "limitation" as all elderly developments are designed and intend to serve elderly who do not use primary schools.

Commenter (3) asserted that large cities will not legally be able to provide letters stating the development is necessary in order to comply with their fair housing obligations on the basis that the statement is too broad and too open to legal interpretation. Cities will be more comfortable, according to commenter (3), with confirming compliance with their planning documents; therefore, commenter (3) and similarly commenter (35) recommended the following modification:

> "(iii) The Development is ~~necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order~~consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the city's or county's HUD consolidated plan."

Commenter (35) further asserted they disagree with the use of undesirable neighborhood characteristics as a proxy for race in the QAP and that instead of disqualifying areas because of racial demographics, the approach toward fair housing seems to substitute a proxy for racial concentration such as high crime or blight. Moreover, according to commenter (35) the disqualification of neighborhoods based on race, or based on a proxy for racial concentration is only fair if there are broad exceptions. Commenter (35) added that HUD site and neighborhood standards have always recognized broad exceptions for economically revitalizing areas and rehabilitation developments and suggested the Department broaden its exception to allow a site that is consistent with fair housing obligations. Commenter (35) expressed support for the modification as proposed by commenter (3).

Commenter (34) recommended the following modification so that there is no implication that Fair Housing goals may only be achieved with the development in question.

> "(iii) The Development ~~is necessary to enable~~enables the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order."

Commenter (22) recommended the following modification on the basis that staff's recommendation could be eligibility, ineligibility or even neutral and as a result the proposed language could add confusion.

> "Should the Board ~~uphold staff's recommendation or~~ make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal."

Commenter (32) expressed support regarding evidence of mitigation of undesirable neighborhood characteristics that must include timelines and the expectation that the issues being addressed will be resolved or significantly improved by the time the development is placed into service.

STAFF RESPONSE: In response to commenters (1), (3), (21), (23), (34), (35), (49), (51) staff believes it is important for applicants to perform an initial evaluation of their sites with respect to crime and this rule encourages that evaluation. Staff also wants to provide a universal benchmark by which such evaluation can be performed recognizing that how local police departments report crime differs from city to city. If, based on results from Neighborhoodscout.com, disclosure is necessary then the rule provides additional flexibility in the data source or other information that can be used as mitigation, including police beat data as suggested by the commenters. The crime rate threshold does not result in an application being ineligible but merely triggers a more substantive review of relevant information concerning the neighborhood.

In response to specific comments by commenter (35) who expressed disagreement with the use of undesirable neighborhood characteristics as a proxy for race in the QAP, staff disagrees on the basis that the undesirable neighborhood characteristics may not have anything to do with the racial composition of the residents in the area but has to do more with concerns with safety and well-being as it relates to the location of affordable housing.

In response to commenter (3), (31), (34) who recommended section (iii) regarding blighted structures be deleted on the basis that the concept of blight is too subjective to administer in a consistent way, staff disagrees and believes such determinations can be and have successfully been made by the Board. Maintaining this requirement will further ensure that the surrounding land uses are fully contemplated by the developer prior to making an application.

As it relates to the basis by which a site can be found eligible by the Board in response to commenter (3), the justification for the recommended change is based on cities not legally being able to provide such letters; however, the Department does not know this to be true. Moreover, what a city will or will not be comfortable in confirming with respect to affirmatively furthering fair housing may very well have to do with the location of the site itself. Staff notes that providing such a letter is not a threshold requirement in general, but one of three elements by which the Board has to consider, should staff recommend that a site be found ineligible. In response to commenter (34) staff disagrees and believes that the location of the development is important in an assessment to affirmatively further fair housing. While staff recommends no other changes based on these aforementioned comments, staff has clarified this section to indicate that such information would need to be provided by the Applicant.

In response to commenters (3), (30), (31), (34), (49) and (51) staff believes developments located in areas where the schools that would reasonably be attended by the tenants is worthy of consideration. Staff notes that based on the 2015 Accountability Ratings released by TEA 94% of school districts achieved the Met Standard rating and 86% of elementary, middle and high schools achieved the Met

Standard rating. Based on these high percentages and in response to commenter (3), (31), (34), staff does not believe the disclosure and assessment required will create any more additional administrative burden than any of the other undesirable neighborhood characteristics. In response to commenter (30) staff has modified the rule to reflect the following:

> "Possible mitigation for areas where the schools have not achieved the Met Standard rating could include, but is not limited to, a letter from the Superintendent or member of the school board identifying the efforts it has undertaken to increase student performance, including benchmarks for re-evaluation, any local efforts that may be underway (including plans for school expansion or new schools built to alleviate over-crowding), and long-term trends that would point toward their achieving the Met Standard rating by the time the Development places in service. In general, ~~Mitigation~~mitigation of any of the undesirable neighborhood characteristics must also include timelines that evidence that efforts are already underway and a reasonable expectation that the issue(s) being addressed will be resolved or significantly improved by the time the proposed Development is placed in service."

In response to commenters (23), (49) and (51) requesting supportive housing developments to be exempt from the Met Standard requirement, there is no TDHCA restriction on children living in a supportive housing development and, therefore, staff believes that such developments should be held to the same standard considering a tenant with a child may request to lease at a supportive housing development. Similarly, in response to commenter (49) and (51), those with an elderly preference will be required, based on HUD guidance, to operate the development in a manner that will enable it to serve a reasonably foreseeable demand for households with children. As a result, staff believes the Met Standard rating of the schools to be important.

In response to commenter (22), staff agrees with the recommended change regarding Board determination of ineligibility.

Staff appreciates the support expressed by commenter (32).

10. §10.101(b)(4) – Subchapter B – Mandatory Development Amenities (3), (21), (31), (36), (49)

COMMENT SUMMARY: Commenter (3), (21), (31), (36) requested that central air not be required for acquisition/rehabilitation developments where the units currently operate with PTACs and further stated that modern PTAC units are energy and cost efficient and older existing buildings typically do not have the plate height to allow for both central air and reasonable ceiling height. Commenter (3), (21), (31), (36) proposed the following modification:

> "(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation~~only~~); and"

Commenter (49) suggested a similar modification noting efficiency and one-bedroom units and also recommended a PTAC with an EER 11.5 rating. Commenter (49) further noted that the cost to replace a PTAC system with central air is cost prohibitive in an existing project and PTACs are much less expensive as it relates to long-term maintenance costs. Moreover, the cost per square foot scoring item restricts the amount of hard costs which makes it difficult to add the central air

requirement into the budget and still remain competitive. Commenter (49) recommended the following changes:

> "(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO, ~~or~~ Efficiency Units and Rehabilitation developments consisting of efficiency and one bedroom units that currently have PTAC's only); and"

STAFF RESPONSE: In response to commenters (3), (21), (31), (36), (49) staff believes that the general high caliber of rehabilitation expected by the Department requires that central air conditioning remain a requirement for rehabilitation developments; however, should the Board choose to offer some relief to Applicant's proposing rehabilitation, staff believes that mini-split systems could be an appropriate alternative. Mini-split systems are generally superior to traditional PTAC units. In addition to being much more efficient, they also offer quieter operation. As advances are made in PTAC units and where there is a demonstrated structural need, the Board may still approve a waiver on a case-by-case basis.

Staff recommends no change based on these comments.

11. §10.101(b)(5) – Subchapter B – Common Amenities (3), (28), (30), (31), (38), (45)

COMMENT SUMMARY: Commenter (3), (28), (30), (31) stated that extending obligations associated with providing common amenities past the compliance period is inconsistent with the Department's current policy of confirming compliance during the compliance period and that extending this type of compliance through the Extended Use Period will create further administrative burden, both for program participants and Department staff. Commenter (3), (28), (30), (31) requested the timeframe through the Compliance Period be restored.

Commenter (38) expressed support for the green building threshold points and also encouraged the Department to partner with Texas' utilities to make energy-efficiency programs more accessible to affordable, multifamily developments.

Commenter (45) believed that if tenants in a second phase of a development are able to enjoy the benefits of an amenity built in the first phase then the amenity should count for points in the second phase. Commenter (45) asserted that building an additional amenity in some cases is an inefficient use of federal resources and further expressed that any concerns over eligible basis can be resolved at cost certification. Commenter (45) recommended the following modification to this section:

> "All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development ~~cannot~~ can be claimed for purposes of meeting this requirement for the second phase, as long as that amenity still meets any requirements with respect to its size, or where appropriate, the number of amenities required per unit. ~~. The second~~

~~phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development.~~ All amenities must be accessible and must be available to all units via an accessible route."

STAFF RESPONSE: In response to commenters (3), (28), (30), (31) regarding the change in terminology from compliance period to extended use period, staff notes that the change was to align with actual practice from a monitoring perspective. Staff believes that the more appropriate term to use is the Affordability Period which addresses the affordability requirements specific to the program applied under and has made the change accordingly. While the rule allows for an owner to replace amenities while keeping the overall point value the same, most of the common amenities are permanent features to the property (e.g. perimeter fencing, swimming pool, etc.) and would presumably remain throughout the life of the property and benefit future tenants. Moreover, because the common amenities are capitalized costs with the same depreciation periods as the units themselves as evidence of their inclusion in eligible basis they should be maintained throughout the Affordability Period. Staff has further researched commenters claims that this is a change in policy and confirmed that an inconsistency in the policy first occurred during the 2013 revamping of the QAP where the "Compliance Period" was first specified in the new Subchapter B; however, this was inconsistent with the executed LURA's and compliance monitoring requirements. Accordingly, the proposed rule is in accord with the Department's policy on this issue, as has been historically expressed through its LURA's.

Staff appreciates the support expressed by commenter (38).

In response to commenter (45) the size of a development's amenities for a first phase should stand on their own and should not anticipate an over-sizing to support a second phase because the second phase may never come to fruition. Moreover, parsing the eligible basis for an oversized pool or community building, for example, would unnecessarily complicate the calculation of eligible basis for both phases.

Staff recommends no change based on these comments.

12. §10.101(b)(6) – Subchapter B – Unit Requirements (3), (28), (30), (31)

COMMENT SUMMARY: Commenter (3), (28), (31) stated that extending obligations associated with unit requirements past the compliance period is inconsistent with the Department's current policy of confirming compliance during the compliance period and that extending this type of compliance through the Extended Use Period will create further administrative burden, both for program participants and Department staff. Commenter (3), (28), (31) requested the timeframe through the Compliance Period be restored.

STAFF RESPONSE: In response to commenters (3), (28), (30), (31) regarding the change in terminology from compliance period to extended use period, staff notes that the change was to align with actual practice from a monitoring perspective. Staff believes that the more appropriate term to use is the Affordability Period which addresses the affordability requirements specific to the program applied under and has made the change accordingly. While the rule allows for an owner to replace amenities while keeping the overall point value the same, many of the unit amenities are permanent features to the property (e.g. storage room, covered patios/balconies, nine foot ceilings,

etc.) and would presumably remain throughout the life of the property and benefit future tenants. Moreover, because the amenities are capitalized costs with the same depreciation periods as the units themselves as evidence of their inclusion in eligible basis they should be maintained throughout the Affordability Period. Staff has further researched commenters claims that this is a change in policy and confirmed that an inconsistency in the policy first occurred during the 2013 revamping of the QAP where the "Compliance Period" was first specified in the new Subchapter B; however, this was inconsistent with the executed LURA's and compliance monitoring requirements. Accordingly, the proposed rule is in accord with the Department's policy on this issue, as has been historically expressed through its LURA's.

Staff recommends no change based on these comments.

13. §10.101(b)(7) – Subchapter B – Tenant Supportive Services (1), (3), (28), (30), (31), (49)

COMMENT SUMMARY: Commenter (3), (28), (31) stated that extending obligations associated with providing supportive services past the compliance period is inconsistent with the Department's current policy of confirming compliance during the compliance period and that extending this type of compliance through the Extended Use Period will create further administrative burden, both for program participants and Department staff. Commenter (3), (28), (31) requested the timeframe through the Compliance Period be restored.

Commenter (49) recommended that item (X) be modified for consistency with the Aging in Place scoring item so that smaller developments can effectively implement this expensive, yet extremely important service.

> "(X) ~~a full-time~~ An on-site resident services coordinator ~~with a dedicated office space~~ at the Development that works a minimum of 16 hours per week for developments of 80 units or less and a minimum of 32 hours for developments 81 units or more (2 points);"

Commenter (1) expressed opposition to subparagraph (Z), relating to proximity to facilities for treatment of alcohol dependency, PTSD, therapeutic and rehabilitative services, and medical and/or psychological services being utilized for all developments on the basis that not all developments engage or refer their residents to their use. Commenter (1) asserted that this is ultimately a free point for developments instead of forcing them to choose from the menu of services that actually require participation in order to get the points and further suggested that this item was originally included as specific to supportive housing and should be called out for supportive housing exclusively.

STAFF RESPONSE: In response to commenters (3), (28), (30), (31) regarding the change in terminology from compliance period to extended use period, staff believes that the more appropriate term to use is the Affordability Period which addresses the affordability requirements specific to the program applied under and has made the change accordingly. Staff has further researched commenters claims that this is a change in policy and confirmed that an inconsistency in the policy first occurred during the 2013 revamping of the QAP where the "Compliance Period" was first specified in the new Subchapter B; however, this was inconsistent with the executed LURA's and compliance monitoring requirements. Accordingly, the proposed rule is in accord with the Department's policy on this issue, as has been historically expressed through its LURA's.

In response to commenter (49) staff believes that allowing a development to claim points for the supportive service requirement that they are already receiving points for under a scoring item could effectively water-down the overall number of supportive services required. Moreover, making the change suggested by the commenter could affect the ability of a non-competitive HTC application to claim points for this service by making it more restrictive. It would also be impractical for staff to independently verify compliance with the total number of hours worked and even if it could be monitored, any finding of less than the required hours would be considered an uncorrectable finding of noncompliance.

In response to commenter (1) staff disagrees that general population or elderly development residents would not benefit from proximity to a facility that offers therapeutic or rehabilitative services, treatment for alcohol dependency or psychological services. Staff has clarified this item to reflect that, regardless of population served, if the development has a referral process and provides transportation to and from the facility they would qualify for the points.

Staff recommends no change based on these comments.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is adopted pursuant to §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Sections 10.204 – 10.205 and 10.207 are adopted with changes to the text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6414). Sections 10.201 – 10.203 and 10.206 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (3) Texas Affiliation of Affordable Housing, (19) R.L. "Bobby" Bowling IV, (21) Structure Development, (22) Cynthia Bast, Locke Lord, (37) Terri Anderson, (45) Pedcor Investments.

14. Subchapter C – General Comment (22)

COMMENT SUMMARY: Commenter (22) noted that throughout the Rules, the Department has various ways of referring to Persons involved with an Application – i.e. Applicant, Affiliate, Principal and Development Team and further stated that sometimes their usage creates unintended burdens or infeasibility for Applicants where the goal should be uniformity and consistency. Commenter (22) asserted that the organizational charts need to be the hub of the wheel hosting the various spokes (ineligibility, previous participation, etc.). Commenter (22) further explained the certain kinds of organizations such as non-profit organizations, governmental bodies and public corporations require different treatment because control and governance of these entities is so different than private, closely-held organizations. Non-profits, governmental bodies and public corporations are not generally run by those who own the entity or serve on the board but rather they are operated on a day-to-day basis by a few officers and/or employees. According to commenter (22), there have been instances where board members of non-profits, governmental bodies and public companies are uncomfortable with signing certifications required in the application, with some even resigning their role on the board, because they go beyond an individual's personal knowledge. Commenter (22) believed more improvement is needed with respect to these certifications and with the usage of various Persons involved with an Application.

STAFF RESPONSE: Staff partially agrees that these non-substantive clarifications may be beneficial, but as this section and these definitions were not altered from last year a review or re-write of them is not warranted by this comment.

Staff recommends no changes based on these comments.

15. §10.201(2)(B)(iii) – Subchapter C – Filing of Application for Tax-Exempt Bond Developments (37)

COMMENT SUMMARY: Commenter (37) asserted the Department should not require shorter closing expectations for Traditional Carryforward Tax-Exempt bond applications but should instead be more development-friendly with the understanding that it is very difficult to close on a tax-exempt bond development in five months. Commenter (37) suggested the language under (iii) of this subparagraph be removed.

STAFF RESPONSE: Staff recognizes that Traditional Carryforward applications are allowed a longer timeframe by which to close and that depending on the financial structure or funding sources involved such timeframe could be warranted. Staff believes it is important for its analysis of financial feasibility be concurrent with the analysis performed by the lender, syndicator and other funding institutions to ensure consistency with the representations made in the application and that it accurately reflects anticipated costs. Recognizing that many aspects of a development can change at any given point, staff does not believe it is unreasonable that after Board consideration the transaction be in a position to close shortly thereafter.

Staff recommends no changes based on these comments.

16. §10.202(1) – Subchapter C – Ineligible Applicants (22)

COMMENT SUMMARY: Commenter (22) stated the opening paragraph of this section applies the standard therein to any party on the Development Team, which is defined broadly to include any Person with any role in the Development, which would include not only the developer and guarantor, but also minor players like lawyers, architects, or even construction subcontractor. All of these parties would be held to this standard, and according to commenter (22) it is unconscionable to ask an applicant, developer, or guarantor to make representations and certifications as to every single member of the development team. Commenter (22) recommended the Department only apply these ineligibility standards to those persons reflected on the organizational chart for the applicant, developer and guarantor.

STAFF RESPONSE: Staff partially agrees that these non-substantive clarifications may be beneficial, but as this section and these definitions were not altered from last year a review or re-write of them is not warranted by this comment.

Staff recommends no changes based on these comments.

17. §10.203 – Subchapter C – Public Notifications (55), (56), (57), (58), (59), (60), (61), (62)

COMMENT SUMMARY: Commenter (55) contended that the residents of any subdivision should be notified when low-income projects are planned to be built in neighborhoods either through the homeowner's association or through each individual family that is going to be affected.

Commenter (56), (57), (58), (59), (60), (61), (62) recommended the changes below to the notification process so that no other community suffers the fate of having an affordable development adjacent to their community without the proper notification and no options to prevent it.

"**(1) Neighborhood Organization Notifications.**

(A) The Applicant must identify and notify all Neighborhood Organizations (HOA's) on record with the county or the state as of ~~30~~90 days prior to the Full Application Delivery Date and whose boundaries are immediately adjacent to or in a radius of two miles from ~~include~~ the proposed Development Site.
(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations (HOA's) on record with the county or state as of ~~30~~ 90days prior to the Full Application Delivery Date and whose boundaries are immediately adjacent to or in a radius of two (2) miles from ~~include~~ the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph…..

(A) Neighborhood Organizations (HOA's) on record with the state or county as of ~~30~~90 days prior to the Full Application Delivery Date whose boundaries ~~include~~ are immediately adjacent to or within a two (2) mile radius to the Development Site;.."

Commenter (56), (57), (58), (59), (60), (61), (62) additionally proposed new definitions for terms used in this section – specifically to "notify" means the actual or physical presentation of a hardcopy document to an HOA and that meetings or conversations are not considered notifications; and to "identify" means an actual or physical list as a hardcopy document of HOA's, along with physical addresses, and contact person and phone number.

STAFF RESPONSE: In response to commenters, this is a significant change and would immediately place a new considerable burden on 2016. Staff believes that the extent of this proposed change to the scope of this rule would require renewing the rule-making process and re-publication prior to adoption.

Staff recommends no changes based on these comments.

18. §10.204(5)(B) – Subchapter C – Designation as Rural or Urban (19)

COMMENT SUMMARY: Commenter (19) expressed support for the proposed language and stated it is well thought-out and in accordance with statute.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (19).

Staff recommends no changes based on this comment.

19. §10.204(11) – Subchapter C – Zoning (37)

COMMENT SUMMARY: Commenter (37) suggested that the annexation of a development site while the application is under review should be allowed to provide evidence of appropriate zoning with the Commitment or Determination Notice or provide evidence of vested rights prior to construction commencement. Commenter (37) further stated that involuntary annexation is a key indicator of housing discrimination and a tool the city could use to prevent the application from

being awarded; however, vested rights and other legal vehicles are available to the developer and do not require proper zoning.

STAFF RESPONSE: As it relates to zoning, the rule has required that in instances where an applicant has requested a zoning change then evidence is required at the time of Commitment or Determination Notice that such zoning change was approved. This indicates that they can build what they've represented in the application. In instances where while the application is under review an annexation of a development site occurred, staff does not believe it is unreasonable to request documentation at the time of Commitment or Determination Notice that an applicant has the ability to build what they've proposed on the site. If it was determined that the annexation precluded the applicant from building on the site, staff would be in a position to allocate those credits to the next application in line.

Staff recommends no changes based on these comments.

20. §10.204(14) – Subchapter C – Nonprofit Ownership (3), (21), (22), (37), (45)

COMMENT SUMMARY: Commenter (3), (21), (22), (45) asserted the requirement for documentation to substantiate a property tax exemption adds unnecessary costs to the preparation of an application and believed that applicants relying on a property tax exemption should do so at their own risk. Commenter (21), (45) stated that many attorneys will not want to verify something that is out of their control because only Appraisal Districts can officially grant the exemption. Commenter (3), (21), (45) requested this threshold requirement be deleted.

Commenter (37) suggested in lieu of an attorney statement or opinion, an applicant be allowed to provide a predetermination notice from the applicable appraisal district, but also suggested the Department should recognize state law and not require a non-profit to bear the additional cost burden associated with the attorney statement. Commenter (45) recommended that should this requirement remain that it be moved to Subchapter D, relating to the Real Estate Analysis rules, such that the cost is only borne if the application is underwritten, and that it be included as a condition of the award to be met at Commitment.

Commenter (22) explained that when their firm issues opinions on ad valorem tax exemptions, their client has already gone through the pre-determination process with the appraisal district and their opinion is based upon the pre-determination from the appraisal district and further noted that there is not sufficient time in the application process to obtain the pre-determination such that an opinion can be issued. Moreover, commenter (22) was unclear as to the purpose of the language for the PILOT agreement since it is different from an exemption and is only utilized when a property actually has an exemption by right. Commenter (22) recommended the following modification:

> "(C) ~~For all Applications.~~ Any Applicant proposing a Development with a property tax exemption must include a letter from an attorney ~~statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code~~identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a ~~A~~ proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms~~be documented as being reasonably achievable~~."

STAFF RESPONSE: In response to commenter (3), (21), (37), (45), to the extent that financial feasibility, as evaluated by the Department, is dependent upon such exemption, staff does not believe that it is unreasonable to request documentation indicating it is reasonably expected that a development would qualify for a property tax exemption. Staff has modified the language consistent with what was suggested by commenter (22) and incorporated the change into the Post Award and Asset Management Requirements Rules. Moreover, in response to commenter (45) the documentation would be required to be submitted at the time of Commitment or Determination Notice. The language as it relates to this requirement has been removed from this section and the following has been added under §10.402(d):

> "(7) for Applications underwritten with a property tax exemption documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms."

21. §10.205(5)(B) – Subchapter C – Site Design and Development Feasibility Report (45)

COMMENT SUMMARY: Commenter (45) suggested this report be moved to section §10.204 of the rules so that it is not subject to the same scrutiny as the other third party reports, specifically as it relates to the requirement that they be submitted in their entirety or the application would be terminated. Commenter (45) contended that unlike the other third party reports which are actually completed by third party professionals, the site design and feasibility report can be compiled by the applicant from more than one service provider and to some extent the information contained therein is included in other parts of the application. Commenter (45) recommended this report be subject to the Administrative Deficiency process, including the provision relating to "matters of a material nature not susceptible to being resolved" instead of the provision included in the introductory paragraph for third party reports.

STAFF RESPONSE: Staff agrees with the recommendation of commenter (45). The paragraph relating to the Site Design and Development Feasibility Report has been moved to §10.204.

22. §10.207(a)(1) – Subchapter C – Waiver of Rules for Applications (45)

COMMENT SUMMARY: Commenter (45) requested clarification regarding the authority of the Executive Director to grant waivers. Specifically, the rule indicates that the Executive Director may waive requirements "as provided in this rule" which has been understood to mean that unless a section of the rule actually speaks to a waiver of that particular rule, the Executive Director does not have the authority to entertain a waiver of that rule. Commenter (45) further explained that the only place in the rule that specifically mentions such authority is in the introductory paragraph relating to fees, under Subchapter G and further stated that §11.6(5) relating to Force Majeure is the only other place where waivers are mentioned in that waivers will not be accepted. Commenter (45) asserted that because this waiver section alludes to a process by which an applicant could appeal the denial of a waiver request by the Executive Director it implies that such waiver requests would actually be entertained and further asserted that if waiver requests will not be entertained then the provision should be deleted so as to speed up the process by which such requests would be presented to the Board. Commenter (45) suggested that should such requests be entertained by the Executive Director, the section should be modified accordingly and suggested the following:

"**(b) Waivers Granted by the Executive Director.** The Executive Director may consider requests to waive requirements of those provisions of this rule listed in subsection (a) of this section. ~~as provided in this rule.~~ Even if this section of the rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action..."

STAFF RESPONSE: Staff agrees and has modified the language as recommended by commenter (45).

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 – 10.904 concerning Fee Schedule, Appeals and Other Provisions. Sections 10.901 - 10.904 are adopted without changes to text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6462) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 15, 2015, with comments received from (51) Texas Association of Community Development Corporations

23. §10.901(3) – Subchapter G – Application Fee (51)

COMMENT SUMMARY: Commenter (51) opposed the changed language for nonprofit organizations from "will receive a discount of 10%" to "may be eligible to receive a discount of 10%" on the basis that as previously stated it provides a small, but meaningful incentive to nonprofit developers.

STAFF RESPONSE: The current proposed language does not affect a nonprofit's ability to request and receive a 10% reduction in the application fee, provided that documentation is submitted that affirms the CHDO or nonprofit status.

Staff recommends no change based on these comments.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

Index of all Commenters on Subchapters A, B, C and G

(1) Foundation Communities
(3) Texas Affiliation of Affordable Housing Providers
(4) Alyssa Carpenter
(5) Palladium USA
(6) Chris Boone, City of Beaumont
(7) Rural Rental Housing Association of Texas
(19) R.L. "Bobby" Bowling IV
(21) Structure Development
(22) Cynthia Bast, Lock Lord
(23) New Hope Housing
(24) Mary Henderson
(28) Arx Advantage, LLC
(30) Housing Lab by BETCO
(31) Marque Real Estate Consultants
(32) Texas Appleseed/Texas Low Income Housing Information Service
(34) Barry Palmer, Coats Rose
(36) Texas Coalition of Affordable Developers
(37) Terri Anderson
(38) National Housing Trust
(43) Kim Schwimmer
(45) Pedcor Investments
(49) National Church Residences
(51) Texas Association of Community Development Corporations

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 Subchapter C of this title (relating to Previous Participation), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental assistance or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

(a) Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

(1) deadlines for filing Applications and other documents;

(2) any additional submission requirements that may not be explicitly provided for in this chapter;

(3) any applicable Application set-asides and requirements related thereto;

(4) award limits per Application or Applicant;

(5) any federal or state laws or regulations that may supersede the requirements of this chapter; and

(6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and

verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2015, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(f) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (“FHAST”) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(g) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation.

§10.3.Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code Chapter 2306, Internal

Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(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, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to March 1, 2016;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11 or 12 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11 and 12, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) 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 U.S. Department of the Treasury or the Internal Revenue Service ("IRS").

(18) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See *Executive Award and Review Advisory Committee*.

(22) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(23) Competitive Housing Tax Credits ("HTC")--Tax credits available from the State Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(25) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(26) Contract--See *Commitment*.

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(28) Contractor--See *General Contractor*.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(30) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(31) Debt Coverage Ratio ("DCR")--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a ~~developer fee~~Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer Fee~~fee~~. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

(A) site selection and purchase or lease contract negotiation;
(B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
(C) coordination and administration of activities, including the filing of applications to secure such financing;
(D) coordination and administration of governmental permits, and approvals required for construction and operation;
(E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
(F) selection and coordination of the General Contractor and construction contract(s);
(G) construction oversight;
(H) other consultative services to and for the Owner;
(I) guaranties, financial or credit support if a Related Party; and

(J) any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(39) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(41) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.*, a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (“EGI”)--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(47) Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an “elderly limitation” is a Development that meets the requirements of the Housing for Older Persons Act (“HOPA”) under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving HUD funding and certain other types of federal assistance is a Development subject to an “elderly preference.” A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (“ESA”)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (“EARAC” also referred to as the "Committee")--The Department committee created under Texas Government Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement or
(B) the date which is fifteen (15) years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire 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 subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See *HTC Development.*

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under Texas Government Code, Chapter 2161 by the State of Texas.

(66) Housing Contract System ("HCS")--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(71) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(72) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(78) Market Study--See *Market Analysis*.

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(81) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(82) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(83) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(84) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(85) Notice of Funding Availability ("NOFA")--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(86) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(88) One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(89) Owner--See *Development Owner*.

(90) Person--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 or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(91) Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
(B) a record of such an impairment; or
(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(92) Physical Needs Assessment--See *Property Condition Assessment.*

(93) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas know as census designated places. The Department may provide a list of Places for reference.

(94) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(95) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(96) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area ("PMA")--See *Primary Market*.

(98) Principal--Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) 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.

(101) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(103) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(104) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(105) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(106~~5~~) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107~~6~~) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(108~~7~~) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(109~~8~~) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(110~~09~~) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(111~~0~~) Related Party--As defined in Texas Government Code, §2306.6702.

(112~~1~~) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(113~~2~~) Report--See *Credit Underwriting Analysis Report*.

(114~~3~~) Request--See *Qualified Contract Request*.

(115~~4~~) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(116~~5~~) Right of First Refusal (“ROFR”)--An Agreement to provide a right to purchase the Property to a Qualified Entity ~~Nonprofit Organization or tenant organization~~ with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(117~~6~~) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

(118~~7~~) Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(119~~8~~) Secondary Market Area (“SMA”)--See *Secondary Market*.

(120~~19~~) Single Room Occupancy (“SRO”)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121~~0~~) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the

ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(122~~1~~) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123~~2~~) State Housing Credit Ceiling--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 applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(124~~3~~) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125~~4~~) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter. The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(126~~5~~) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(127~~6~~) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development without Board approval.

(128~~7~~) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and 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 §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(129~~8~~) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(130~~29~~) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(131~~0~~) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(132~~1~~) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(133~~2~~) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office ("TRDO") serving the State of Texas.

(134~~3~~) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(135~~4~~) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(136~~5~~) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11 and Chapter 12 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(137~~6~~) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.

(138~~7~~) 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 complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(139~~8~~) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(140~~39~~) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(141~~0~~) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116)(A)(ii) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(142~~1~~) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(143~~2~~) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if

applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g., Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Executive Director that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certification forms in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 11, 2015, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 18, 2015, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

Subchapter B – Site and Development Requirements and Restrictions

§10.101.Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) – (S) of this paragraph. Supportive Housing Developments located in an Urban Area must meet the requirement in subparagraph (S) of this paragraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or be under active construction, post pad (*e.g.* framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store (~~retail merchandise must be available to unaccompanied minors~~excluding liquor stores, smoke shops and what could otherwise be considered adult-oriented businesses);

(E) federally insured depository institution;

(F) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);

(G) indoor public recreation facilities accessible to the general public, such as, community centers, libraries, fitness club/gym, and senior centers;

(H) outdoor public recreation facilities accessible to the general public, such as parks, golf courses, and swimming pools;

(I) medical office of a general practitioner, dentist, optometrist, urgent care facility or hospital;

(J) public schools~~ (only eligible for Developments that are not Elderly Limitation Developments)~~;

(K) campus of an accredited higher education institution;

(L) community, civic or service organizations that provide regular and reoccurring services available to the entire community (this could include religious organizations or organizations like a ~~, such as~~ Kiwanis or Rotary Club);

(M) child care center (must be licensed - only eligible for Developments that are not Elderly Limitation Developments);

(N) post office;

(O) city hall;

(P) county courthouse;

(Q) fire station;

(R) police station;

(S) Development Site is located within 1/2 mile, connected by an accessible route, of a designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation does not meet this requirement.

(3) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (J) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice. The distances are to be measured from the nearest boundary of the Development Site to the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (J) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Development Sites located within 500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, etc.;

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily;

(E) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(F) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(G) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(H) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids; or

(J) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics to the Department. Disclosure of undesirable characteristics must be made at the time the Application is submitted to the Department. Alternatively, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments). Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and which will include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board ~~uphold staff's recommendation or~~ make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The existence of any one of the five undesirable neighborhood characteristics in clauses (i) – (v) of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph:

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas

Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(v) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM-required search distances from the approximate site boundaries on any one of the following databases:

(I) U.S. Environmental Protection Agency ("USEPA") National Priority List ("NPL");

Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS");

(II) Federal Engineering and/or Institutional Controls Registries ("EC");

Resource Conservation and Recovery Act ("RCRA") facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action ("RCRA CORRACTS");

(III) RCRA Generators/Handlers of hazardous waste; or

(IV) State voluntary cleanup program.

(C) Should any one of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, staff will conduct a further Development Site and neighborhood review which will include assessments of those items identified in clauses (i) – (vi) of this paragraph.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the neighborhood, including comment on concentration based on neighborhood size;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; and

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. For example, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the Environmental Site Assessment. With respect to crime, such information may include, but is not limited to, crime statistics evidencing trends that crime rates are materially and consistently decreasing, violent crime data based on the police beat within which the Development Site is located for the city's police department, or violent crimes within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2014 and 2015 calendar year. A written statement from the local police department, information identifying efforts by the local police department addressing issues of crime, or documentation indicating that the high level of criminal activity is concentrated at the Development Site, which presumably would be remediated by the planned Development, may also be used to document compliance with this provision. Other mitigation efforts to address undesirable characteristics may include new construction in the area already underway that evidences public and/or private investment, and to the extent blight or abandonment is present, acceptable mitigation would go beyond the securement or razing and require the completion of a desirable permanent use of the site(s) on which the blight or abandonment is present such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space. Possible mitigation for areas where the schools have not achieved the Met Standard rating could include, but is not limited to, a letter from the Superintendent or member of the school board identifying the efforts it has undertaken to increase student performance, including benchmarks for re-evaluation, any local efforts that may be underway (including plans for school expansion or new schools built to alleviate over-crowding), and long-term trends that would point toward their achieving the Met Standard rating by the time the Development places in service. In general, ~~Mitigation~~mitigation of any of the undesirable neighborhood characteristics must also include timelines that evidence that efforts are already underway and a reasonable expectation that the issue(s) being addressed will be resolved or significantly improved by the time the proposed Development is placed in service.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions;

(ii) Factual determination that the undesirable characteristic that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on mitigation efforts as established under subparagraph (D) of this paragraph; or

(iii) The Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a

HUD approved Conciliation Agreement, or a final and non-appealable court order, as such documentation is provided by the Applicant as part of the disclosure.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

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

(ii) Any Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The following minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $19,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $15,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work;

(C) For all other Developments, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work; or

(D) Rehabilitation Developments financed with Direct Loans provided through the HOME program (or any other program subject to 24 CFR 92) that triggers the rehabilitation requirements of 24 CFR 92 will be required to meet all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC"); and the requirements in clauses (i) – (iv) of this subparagraph.

(i) recommendations made in the Environmental Assessment and Physical Conditions Assessment with respect to health and safety issues, major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning), and lead based paint must be implemented;

(ii) all accessibility requirements pursuant to 10 TAC §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973) and §1.209 (relating to Substantial Alteration of Multifamily Developments) must be met;

(iii) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(iv) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
(B) Laundry Connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;
(D) Screens on all operable windows;
(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
(F) Energy-Star rated refrigerator;
(G) Oven/Range;
(H) Blinds or window coverings for all windows;
(I) At least one Energy-Star rated ceiling fan per Unit;
(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;
(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;
(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only); and
(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(i) Developments with 16 to 40 Units must qualify for four (4) points;
(ii) Developments with 41 to 76 Units must qualify for seven (7) points;
(iii) Developments with 77 to 99 Units must qualify for ten (10) points;
(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the ~~Extended Use Period~~Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the

Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be accessible and must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Full perimeter fencing (2 points);
(ii) Controlled gate access (2 points);
(iii) Gazebo w/sitting area (1 point);
(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
(v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);
(vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);
(viii) Swimming pool (3 points);
(ix) Splash pad/water feature play area (1 point);
(x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 40 Units loaded with basic programs (maximum of 5 computers needed), 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
(xii) Furnished Community room (2 points);
(xiii) Library with an accessible sitting area (separate from the community room) (1 point);
(xiv) Enclosed community sun porch or covered community porch/patio (1 point);
(xv) Service coordinator office in addition to leasing offices (1 point);
(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
(xvii) Health Screening Room (1 point);
(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
(xix) Horseshoe pit; putting green; shuffleboard court; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;
(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
(xxvii) Common area Wi-Fi (1 point);
(xxviii) Twenty-four hour, seven days a week monitored camera/security system in each building (3 points);
(xxix) Bicycle parking within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);
(xxx) Rooftop viewing deck (2 points); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twenty-two (22) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;
(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;
(-i-) recycling service provided throughout the Compliance Period;
(-j-) for Rehabilitation Developments or Developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;
(-k-) for Rehabilitation Developments or Developments with 41 units or less, clothes dryers vented to the outside;
(-l-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;
(-m-) locate water fixtures within 20 feet of hot water heater;
(-n-) drip irrigate at non-turf areas;
(-o-) radiant barrier decking for New Construction Developments or "cool" roofing materials;
(-p-) permanent shading devices for windows with solar orientation;
(-q-) Energy-Star certified insulation products;
(-r-) full cavity spray foam insulation in walls;
(-s-) Energy-Star rated windows;
(-t-) FloorScore certified flooring;
(-u-) sprinkler system with rain sensors;
(-v-) NAUF (No Added Urea Formaldehyde) cabinets.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(IV) ICC 700 National Green Building Standard (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;
(ii) six hundred (600) square feet for a one Bedroom Unit;
(iii) eight hundred (800) square feet for a two Bedroom Unit;
(iv) one thousand (1,000) square feet for a three Bedroom Unit; and
(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Applications not funded with Housing Tax Credits (*e.g.* Direct Loan Applications) must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the ~~Extended Use Period~~Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Covered entries (0.5 point);
(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
(iii) Microwave ovens (0.5 point);
(iv) Self-cleaning or continuous cleaning ovens (0.5 point);
(v) Refrigerator with icemaker (0.5 point);
(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
(vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);
(viii) Covered patios or covered balconies (0.5 point);
(ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
(x) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);
(xi) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);
(xii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
(xiii) Desk or computer nook (0.5 point);
(xiv) Thirty (30) year shingle or metal roofing (0.5 point); and
(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (*e.g.* HOME Program or other Direct Loans) must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained

throughout the ~~Extended Use Period~~Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (*e.g*. exercises classes must be offered in a manner that would enable a person with a disability to participate~~.~~). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. All of these services must be provided by a person on the premises.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1 point);

(H) annual health fair provided by a health care professional(1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities (*e.g.* Book Clubs and creative writing classes) (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly

Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(T) any of the programs 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 unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point);and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each unit type of otherwise exempt units (*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance 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. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with §1.205 of this title.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

§10.201.Procedural Requirements for Application Submission. The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may be subject to change, including, but not limited to, changes in the amenities ultimately selected and provided.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time, and cannot be waived except where authorized, and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked in the order required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to

closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9)) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, after July 31, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing

information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first 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 and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then an Administrative Deficiency Notice Late Fee of $500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the

specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed in this section include those requirements in §42 of the Code, Texas Government Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has 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;

(F) has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME or NSP-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME or NSP funds repaid;

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. The Executive Director shall make an initial determination whether the person or persons should be involved in the Application within thirty (30) days after the date on which the Applicant receives a preliminary deficiency notice with respect to the Application, including providing information responsive to any supplemental Department requests. The decision of the Executive Director may be appealed in accordance with §10.902 of this chapter. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subparagraph shall be considered:

(i) the amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the Third Party Request for Administrative Deficiency process described in §11.10 of this title (relating to Third Party Request for Administrative Deficiency for Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates

substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1); §2306.6733);

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, townhomes, high-rise etc.); and

(vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve exclusively a Target Population unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. This form, as provided in the Application, must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The form identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

(i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:

(I) a resolution from the Governing Body of that municipality; and

(II) a resolution from the Governing Body of the county; or

(iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

(i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and subparagraph (A) of this paragraph;

(ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
(iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b) and subparagraph (B) of this paragraph; and
(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2016 Application Round, such requests must be made no later than December 15, 2015. If staff is able to affirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to affirm the information contained in the request, a recommendation for denial will be presented to the Board.

(i) The population of the political subdivision or census designated place does not exceed 25,000;

(ii) The characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) The percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014 or 2015 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;
(ii) AIA Document G704--Certificate of Substantial Completion;
(iii) AIA Document G702--Application and Certificate for Payment;
(iv) Certificate of Occupancy;
(v) IRS Form 8609 (only one per development is required);
(vi) HUD Form 9822;
(vii) Development agreements;
(viii) Partnership agreements; or
(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors, if known;

(VI) include the principal amount of the loan; and

(VII) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming receipt of the loan transfer application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a history of fundraising to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) anticipated developer fees paid during construction; and

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with 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 and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances). Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other"

in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction 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 Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) 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 or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify 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.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;
(II) the two (2) most recent consecutive annual operating statement summaries;
(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or
(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan which:
(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
(ii) identifies all residential and common buildings;
(iii) clearly delineates the flood plain boundary lines and shows all easements;
(iv) if applicable, indicates possible placement of detention/retention pond(s); and
(v) indicates the location of the parking spaces;

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) – (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or
(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or
(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change, that a zoning application was received by the political subdivision, and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

(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.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.
(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed Previous Participation Form to the Department. Individual Principals of such entities identified on the organizational chart must

provide the Previous Participation Form, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer Fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The Previous Participation Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable., and subparagraph (C) of this paragraph.

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) 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;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) 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 ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4), then they must disclose in the Application the basis of their nonprofit status.

~~(C) For all Applications. Any Applicant proposing a Development with a property tax exemption must include an attorney statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code. A proposed Payment in Lieu of Tax ("PILOT") agreement must be documented as being reasonably achievable.~~

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis~~, and the Site Design and Development Feasibility Report~~ must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), ~~the Site Design and Development Feasibility Report,~~ and the Primary Market Area map (with definition based on census tracts, zip codes or census place in electronic format) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

~~**(5) Site Design and Development Feasibility Report.** This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.~~

~~(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of~~

~~ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.~~

~~(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.~~

~~(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.~~

~~(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.~~

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207.Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests will not be accepted between submission of the Application and any award for the Application. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver

must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Texas Government Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director finds that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Executive Director. The Executive Director may consider requests to waive requirements ~~as provided in this rule~~of those provisions of this rule listed in subsection (a) of this section. Even if this section of the rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver to the extent such requirement is mandated by statute. Denial of a waiver by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application. Pursuant to Texas Government Code, §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department, and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission), 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 external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications.) Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 for an Administrative Deficiency be issued with respect to challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of $2,500. An extension fee will not be required for extensions

requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME Developments, or upon the completion of the 24-month development period and the beginning of the repayment period for HOME only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit and $34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME only Developments, the fee will be collected beginning

with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs 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. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The

appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department’s rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte

Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

Public Comment

(1) Foundation Communities

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October 13, 2015

Marni Holloway
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Marni:

Thank you for the opportunity to comment on the DRAFT 2016 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We very much appreciate the TDHCA staff for their careful thought and collaboration regarding potential changes to the QAP and rules. We would also like to commend the TDHCA staff for the creative expansion of programs and systems that promote Supportive Housing, green building, targeting of lower incomes, and developments located in urban areas.

Qualified Allocation Plan:

11.6(5) Credit Returns Resulting from Force Majeure Events. The greatest impact on the timing of a development's completion are a series of compounding events. For example, a rainy month plus labor shortage plus a City's change in interpretation of specific development requirements can situate a project very close to their PIS deadline. We ask that TDHCA consider "event chains" where the presence of three or more of the combined factors has caused a project to push past their PIS deadline. We feel comfortable making this suggestion because we know that TDHCA will rely on the burden of proof in evaluating such a request.

11.7 Tiebreaker Factors: We support the additions TDHCA made in the 2016 Draft QAP for tiebreaker factors; however, we encourage TDHCA to please consider adding proximity to public transportation. If you have the choice of two really high opportunity areas in urban areas, the property that is most accessible to public transportation is the project that will align with responsible development and broader appeal to the State's affordable housing residents living in urban areas.

11.9(b)(2) Sponsor Characteristics: While Foundation Communities is ranked as a category 1 portfolio; we do not feel adding in a point for compliance history is good policy. There are numerous examples of times where the ability to "correct" a situation is completely out of an owner's control (for example, the resident who needs to sign the non-compliant form has since died.) This inability to correct a situation has no bearing on the quality of an owner's community or the compliance ability. We are particularly nervous implementing a scoring

factor centered on compliance given the new federal laws in place that TDHCA is still proposing compliance criteria to support. We see this as a problematic scoring criteria and gives certain owners an advantage over other owner's that are just as responsible and compliant, but just had an unfortunate circumstance that they were not able to correct. Please consider striking this section and returning to 2 points for HUB or Nonprofit participation.

11.9(d)(4)(A)(i) Leveraging of Private, State, and Federal Resources: Supportive Housing without any third party hard debt should be given the tolerance allowed under section (i) to go up to a 9% leveraging rate. With no debt, a Supportive Housing project must raise the gap between the tax credits awarded and the total development cost. Sources include local, state and federal soft loans/grants, as well as private foundation grants and owner contributions. A Supportive Housing applicant is always going to apply for the maximum amount of credits in order to help bridge the gap that can't be supported with debt. This structure ensures that Supportive Housing will almost always have a larger percentage of tax credits to total development costs.

In the 2016 QAP, CDBG, HOPE VI, RAD or Choice Neighborhood funding is excepted and allowed to go up to a 9% leverage rate. These projects are eligible for hard debt. It does not seem equitable that these projects are allowed this exception when Supportive Housing is not. Supportive Housing projects must raise their entire gap from sources that often include federal pass-through dollars from the City or State.

We would recommend raising the leveraging percentages by 1 percent for Supportive Housing deals with no permanent debt.

Please change Section 11.9(d)(4) to read as follows:

(A)(i) the Development leverages CDBG Disaster Recovery, Hope VI, RAD or Choice Neighborhoods funding OR the Development is Supportive Housing and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points).

11.9(c)(8) Aging in Place: Please provide an alternative for Supportive Housing, in line with the alternative the draft reflects for "Aging in Place." Like Aging in Place developments, the excellence of nearby schools has no bearing on the suitability of a site for Single Room Occupancy Supportive Housing where no children live at the property. Finding sites to develop Supportive Housing is already a challenge because you need to be connected to public transportation, located close to amenities and accessible to services. Requiring high performing schools is an unnecessary hurdle since individuals living in Single Room Occupancy Supportive Housing Developments will not have any school aged children living at the proper. We recommend simply adding the following language:

> *"An application for an Elderly Development or a Supportive Housing Single Room Occupancy Development may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)."*

11.9(e)(2)(B) Cost of Development per Square Foot: We thank TDHCA for adding back in to the QAP the ability for Supportive Housing developments to factor in 50 square feet of common area space into the Net Rentable Area. This is hugely important for Supportive Housing where common area square footage made up of multiple supportive service offices, tv lounges, meeting rooms and community kitchens are double or triple the amount contained in family properties.

A further comment to this section is due to the construction costs in Austin that have continued to skyrocket (we imagine the same is true in urban areas throughout the state). Projects have particularly been cost burdened due to labor shortages from all the construction projects underway. Due to this fact, we believe the construction costs should be increased throughout this category. Second, due to the vast difference in construction cost between a four-story, elevator-served family project and a Single Room Occupancy Supportive Housing community, we ask that TDHCA make the two categories distinct. SRO Supportive Housing has less of the cheaper square footage to build, but more cost per square foot of the more expensive square footage (plumbing, electrical, HVAC.)

> *(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:*
> - *(i) The Building Cost per square foot is less than $90 per square foot;*
> - *(ii) The Building Cost per square foot is less than $95 per square foot, and the Development meets the definition of a high cost development;*
> - *(iii)The Building Cost per square foot is less than $125 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development;*
> - *(iv) The Hard Cost per square foot is less than $110 per square foot; or*
> - *(v) The Hard Cost per square foot is less than $120 per square foot, and the Development meets the definition of high cost development;*
> - *(vi) The Hard Cost per square foot is less than $150 per square foot, and the Development meets the definition of both a high cost development* AND a single room occupancy Supportive Housing development.

Multi-Family Rules:

10.101(a)(4)(B) Use of Neighborhoodscout.com: Foundation Communities supports TACDC's comments regarding utilizing neighborhoodscout.com. As proprietary software, we are unsure how the website owners collect, analyze, and report data across a city. We are concerned that the data is not accurate and should not be utilized to base policy decisions. We echo TACDC's comments that TDHCA not rely on this website for purposes of TDHCA's multifamily programs.

10.101 (b)(7) Tenant Supportive Services: Foundation Communities is not supportive as utilizing section (Z) below for points in the Tenant Supportive Services section. A development might happen to be located within one mile of one of these facilities, but they do not engage nor refer their residents to their use. This turns out to be a free point for deals when they could be forced to choose from the menu of services that actually require participation to get the point. We feel this is a loop hole. This section was originally included

specific to Supportive Housing. Section (Z) should be called out for Supportive Housing exclusively.

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point:
(i) Facility for treatment of alcohol and/or drug dependency;
(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;
(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or
(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of
limited financial means.

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact our team with any questions.

Sincerely,

Jennifer Hicks
Director of Housing Finance

(3) Texas Affiliation of Affordable Housing Providers

Proposed Section 811 Alternative Incentive for TAAHP consideration

TAAHP presents this alternative incentive for consideration of membership and possible presentation to TDHCA. It is a blend of the 2015 scoring incentive and other incentives.

- Prong 1: Revert to 2015 QAP language for 9% HTC **AND** include 4% HTC development participation in Section 811 Program - This way both programs are participating in furthering 811 Program

For the 4% HTC developments - include a threshold item that requires commitment of Section 811 PRAC units in the proposed development, or existing 4% HTC developments, utilizing a tiered approach as follows: Developments with 100 units or less, applicant must commit 10 units to the Section 811 PRAC program; Developments with 101-200 units, applicant must commit at least 20 units to the Section 811 PRAC program; Developments with 201 units or more, applicant must commit 30 units to the Section 811 Program. Applicants may commit less units, if the Integrated Housing Rule (10 TAC Section 1.15) or Section 811 PRAC Program guidelines and requirements limits the Development to fewer than the required number of units.

The Development must not be an Elderly Limitation Development or Supportive Housing;

The Development has units available to be committed to the Section 811 PRAC Program, meaning those units do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving Section 811 assistance and cannot have an existing restriction for persons with disabilities;

The Developments must be located in the Urban areas of one of the following: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Ft. Worth-Arlington MSA, El Paso MSA, Houston-The Woodlands-Sugar Land MSA, McAllen-Edinburg-Mission MSA or San Antonio-New Braunfels MSA;

The Development Site must not be located in the mapped 500-year floodplain or in the 100-year floodplain.

- Prong 2: Incentives for Committing Section 811 Units in Existing Developments - Outside of Scoring Criteria

Applicants may receive one of the following incentives for placing at least 10 Section 811 PRAC units in their existing developments:

1. Increased Developer Fee. Applicants may receive up to an additional 5% in Developer Fee to what is prescribed in 10.302(d)(7)
2. Decrease Extended Use Period. Applicants may reduce their Extended Use Period by up to five (5) years. Extended Use Periods cannot be less than the federally mandated 30 years.

We may also want to consider language in the stand alone Section 811 NOFA, rather than include this in a rule. Perhaps this will help with the "logical outgrowth" rule theory. The idea here is to utilize the incentives to work for a specific existing development, of Applicant's

choosing, that can benefit from one of these incentives. Language included for NOFA could be as follows:

NOFA - Should an applicant receive a Housing Tax Credit award, there will be favorable considerations made by staff recommending LURA amendments in existing Developments chosen by the Applicant. LURA amendments incentives are as follows:

1. Decrease Extended Use Period by up to five (5) years;
2. Reduction in restricted units, during Extended Use Period - work outs to reduce compliance issues.

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October 13, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2016 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP), the Underwriting and Loan Policy, and the Post Award and Asset Management Requirements that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 1, 2015 in response to the rules approved for public comment by the TDHCA Governing Board on September 11, 2015.

Please note that while the following recommendations are numerous due to the large and diverse membership, there are several issues that generated significant amount of discussion among the TAAHP membership. I highlight those three issues here, in an effort to emphasize their importance to our membership and encourage TDHCA staff to give them serious consideration.

1. Reducing concentration. Under the current rules, applicants are often competing for sites within the same census tracts, which often results in developers paying a premium for land that is not necessarily the best real estate in terms of connectivity to amenities and services. Adding concepts like "same type development" to the tie breaker and to the underserved point category and adding more tiering in terms of educational excellence are efforts to open up new census tracts to the competition.
2. Clarifying the competitive process. There are several new concepts in the QAP that are very vague in terms of how they will be applied. One example is the new category in the underserved point category for job growth. Another example is the new point category for applicants depending on whether the portfolios are characterized as either Category 1, 2, 3 or 4. There is a great deal of confusion as to which categories apply and the TAAHP membership requests clear guidance in order to make informed decisions in terms of the competition.
3. The Section 811 Program. TAAHP is opposed to the new one point advantage for placing Section 811 voucher holders in existing properties. We understand that TDHCA wants to house 811 voucher holders as soon as possible, but this provision reduces program participants' flexibility in doing so and, as drafted, only benefit a handful of program participants. As an example, one TAAHP member

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RBC Capital Markets- Tax Credit Equity Group

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Mark-Dana Corporation

MARK MAYFIELD
Texas Housing Foundation

JANINE SISAK
JSA Development Company, LLC

CHRIS THOMAS
CohnReznick LLP

RON WILLIAMS
Southeast Texas Housing Finance Corporation

Executive Director
FRANK JACKSON

with more than 25 properties with approximately 2,000 units has only one existing property that would qualify. Under this new rule, this applicant is now forced for point reasons to reserve this property for the 2016 round instead of using it to house the 811 voucher holders as committed under the 2015 rules. This result is the exact opposite of what TDHCA is trying to achieve. Please note that TAAHP has formed a sub-committee that has come up with alternative incentives for TDHCA staff to consider. We will be submitting those recommendations under separate cover.

With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter A – Definitions

Section 10.3(47) Elderly Development

TAAHP requests further clarification on why these new definitions are necessary.

Justification: There is general concern amongst the membership about the new Elderly Development Definition because most cities and other government funders are very sensitive to these definitions. An effort to further define these terms might lead to greater conflicts between programs.

Section 10.3 Placed in Service

TAAHP requests that a definition of Placed in Service be added and that the definition be consistent with the Internal Revenue Code Section 42 provision, which allows a building to be counted as “Placed In Service” if only one unit in the building has received a certificate of occupancy. TAAHP also requests the TDHCA’s carryover documentation be changed so that the language regarding Placed in Service is consistent with the Internal Revenue Code.

Justification: TDHCA’s policy on placed in service should be consistent with the federal regulation.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2)(c) Mandatory Community Assets

TAAHP requests that churches or places of religious worship be reinstated as a Mandatory Community Asset.

Justification: Churches are a public service to the surrounding communities. These institutions not only provide support for the spiritual and emotional needs and health of its members in the community, but also provide a myriad of supportive public services to the community. Such services include day care, meals on wheels, counseling, food pantries, immigration and free legal clinics, seminars on health and finances and emergency funds for items such as rent, utilities, medical expenses or car repairs.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(4)(B) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section regarding incidents of violent crime:

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(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com."

Justification: Because neighborhoodscout.com provides inconsistent results, applicants should have the option of obtaining statistics directly from the police department. In those cases where obtaining statistics directly from the police department is difficult, neighborhoodscout.com can serve as the source. This either/or approach provides much needed flexibility for the applicant in obtaining the relevant information.

TAAHP also requests that TAAHP requests that the following section regarding blighted structures be deleted:

~~(iii) The Development Site is located within 1,000 feet of any census tract of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism, that they would commonly be regarded as blighted or abandoned.~~

Justification: This concept of "blight" is too subjective to administer in a consistent way.

TAAHP also requests that this subparagraph regarding schools that have not Met Standard be deleted:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

Justification: Because certain school districts in the larger urban areas struggle to meet the new standards, because they are indeed new standards, this section serves to redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff.

Section 10.101(a)(4)(E) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section:

(iii) The Development is ~~necessary to enable a state, a participating jurisdiction or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD-approved Conciliation Agreement, or a final and non-appealable court order~~ consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the city's or county's HUD consolidated plan.

Justification: Larger cities, like the City of Houston, will not legally be able to provide letters stating that "the Development is necessary to comply with its obligation to affirmatively further fair housing." This statement is too broad and too open to legal interpretation. Instead, cities will be more comfortable confirming compliance with their planning documents.

Section 10.101(a)(5) Common Amenities, Section 10.101(6) Unit Requirements, Section 10.101(7) Tenant Services

TAAHP request that the timeframe be restored to Compliance Period instead of Extended Use Period.

Justification: Extending program participants' obligations in these respects past the compliance period is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff.

Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests the following changes to this section:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation)

Justification: Modern PTAC units are energy and cost efficient, and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.204(14) Non-Profit Ownership

TAAHP requests deletion of the following paragraph:

~~(C) For all Application. Any Applicant proposing a Development with a property tax exemption must include an attorney statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code. A proposed Payment in Lieu of Tax ("PILOT" agreement must be documented as being reasonably achieved."~~

Justification: This adds unnecessary costs to the preparation of an application. Applicants relying on a property tax exemption should do so at their own risk.

Qualified Allocation Plan

Section 11.4(b) Maximum Request Limit

TAAHP requests a new limit for USDA applications of $750,000.

Justification: Most USDA developments are small so a $750,000 cap is appropriate.

Section 11.4(c) Tax Credit Requests and Award Limits

TAAHP requests the following paragraph 2 be deleted in its entirety:

(2) ~~The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMR's) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax Exempt Bond Developments, as a general rule, an SADDA designative would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicant must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.~~

Justification: The Internal Revenue Code allows the 30% boost in DDAs designation to be extended up to 365 days by allowing a project that applied for a bond reservation in one year to close the transaction in the next year. Section 11.4(c)(2) grants the 30% tax credit boost only when the bond reservation certificate is received in the same year as the HUD SADDA designation, which is subject to change annually. The housing site may no longer be included in a SADDA in the year following receipt of the private activity bond allocation reservation. The proposed rule will also force closing 4% bond transactions that access the increase amount of private activity bond allocation after the mid-August housing bond collapse by the end of the calendar year, unduly reducing the already very short 150 day closing timeframe.

Section 11.7 Tie Breaker Factors

TAAHP recommends the following changes to paragraph 4:

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type ~~a development~~. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) *Sponsor Characteristics. Previous Participation Compliance History*

While no consensus was reached on whether this point item should remain in the QAP, there was consensus on needing clarifying language and direction from TDHCA's asset management and compliance division regarding how an applicant determines which category applies. Additionally, this point category should be tied to the category of an applicant as of March 1, 2016, so that there

is clarity within the competitive round in terms of scoring.

(c) Criteria to service and support Texans most in need

(4)(A)(ii) *Opportunity Index*

TAAHP requests that any instance of "77 or greater on index 1" change to "76 or greater on index 1."

Justification: The 2015 data released by TEA indicate the median Index 1 score for elementary to be 76 as opposed to the 2014 data which indicated median Index 1 score for elementary to be 77.

TAAHP also request that the poverty rate for opportunity index be increased to 20% for all areas outside of Region 11 where the poverty rate should stay at 35%.

Justification: This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunity" which will promote further de-concentration of awards. These new census tracts are still first and second quartile census tracts and in many cases have highly rated schools and are closer to services and town centers. This change also helps alleviate the issue that residents living in preservation properties are part of the poverty rate, making their own communities uncompetitive.

(4)(B) *Opportunity Index for Rural*

TAAHP recommends the following to be added to subsection (i) as further clarification on what "services specific to a senior population" might entail:

- Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site);
- Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primary care doctor's offices that accept Medicaid/Medicare, ERs and Hospitals.

(5) Educational Excellence

TAAHP recommends a third scoring tier for educational excellence:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school either all with a Met Standard rating or any one of the three schools with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points);

Justification: This is one area where TAAHP would like to see more point variation. Because it is very difficult to find sites where all three schools have an Index 1 score of at least 77, it would create more variation in scoring if there were other ways to receive partial points.

(6) Underserved Area

TAAHP members had differing opinions on this point category, although members reached consensus on the following language changes to subparagraphs (C),(D), and (E):

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development (2 points);
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development serving the same Target Population (2 points);
(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a Development that~~ which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);

Additionally, TAAHP requests more direction from staff about what would be required in terms of documentation for subsection (F) of this point category. Additionally, TAAHP proposes some language to this paragraph to include leased spaces in addition to newly construction space:

Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and or additional) office space and undergone initial hiring of its workforce . . . .

(7) Tenant Populations with Special Housing Needs

TAAHP requests that the new paragraph A that gives extra points for placing 811 residents in existing units be deleted:

~~Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the~~

~~proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

Justification: A large percentage of developers, even the more established Texas developers with large portfolios, will not qualify for this point creating an unfair competitive advantage for only a handful of developers with a disproportionate number of general population deals.

(8) Aging in Place

TAAHP recommends the following language in lieu of the language in the published rules.

An Application for an Elderly Development may qualify to receive up to three (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):

a. "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms;
b. 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;
c. Chair height (17 – 19") toilets in all bathrooms; and
d. A continuous handrail on at least one side of all interior corridors in excess of five feet in length.

(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 point):

i. A minimum of 16 hours per week for Developments of 80 units or less;
ii. A minimum of 24 hours per week for Developments of 81 to 120 units; and
iii. A minimum of 32 hours per week for Developments in excess of 121 Units.

9) Proximity to Important Services

TAAHP requests that the radius for rural deals be expanded to 3 miles.

Justification: Residents of tax credit housing in rural areas are reliant on their cars and often services like this are on the outskirts of town, near more major roadways.

(d) Criteria promoting community support and engagement

(5) Legislative Letters

TAAHP requests that positive letters of support from state representations receive +4 points, neutral letters receive 0 points, and letters of opposition will receive -4 points.

Justification: The total point range for these letters will be 8 points, rather than the current 16 point range, thereby making this point range of 8 consistent with the legislative intent of ranking it the lowest point category under the statute.

(7) Concerted Revitalization Plan.

TAAHP requests that this entire section revert back to the 2015 language.

Justification: This re-written section in the current draft is a concern with regard to its high level of subjectivity, especially with specific regard to the requirement that the problems identified have to be "sufficiently mitigated and addressed prior to the Development being placed in service." The current language will only benefit neighborhoods that are at the tail end of the revitalization efforts.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

(2) *Cost of Development per Square Foot*

TAAHP requests that the cost per square foot limitations in this section should be increased by at least $10 per square foot.

Justification: The current draft does not adjust upward for recent construction cost increases which have been in the range of 8% to 12% per annum for the last three years.

TAAHP also requests the following language change:

(E)(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the development is considered a High Cost Development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

Subchapter D – Underwriting and Loan Policy

Section 10.302(d)(1) Operating Feasibility – Income

TAAHP requests that this provision revert to the 2105 language which allowed for market rate rents to be set by the applicant at levels supported by the market study regardless of what percentage market rate units a development had.

Justification: There is no "one size fits all" approach to rents in the various Texas markets. The large urban markets, and not only Austin, are performing very differently than the smaller rural markets, which is why market studies are so important in determining market rents.

Section 10.302(d)(4)(D)(iv) Acceptable Debt Service Coverage Ratio Range

TAAHP requests that the language in this section revert back to the 2015 language.

Justification: TAAHP members do not understand why this change is proposed and would like to better understand the purpose.

Section 10.302(e)(7)(F) Developer Fee

TAAHP request that the following section be deleted:

~~The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

JUSTIFICATION: A new provision has been added that caps the Developer Fee to the amount determined at the original underwriting. We respectfully disagree that a developer's amount of work is the same regardless of the cost of the development. When construction costs are higher than anticipated, the developer has to do considerable more work in terms of value engineering and identifying additional soft costs. Furthermore, the payment of development fee is capped by available sources, so this new rule merely limits basis, placing the developer at higher risk for basis adjusters.

Subchapter E – Post Award and Asset Management Requirements

Section 10.402(g) 10 Percent Test (Competitive HTC Only)

TAAHP requests that the last sentence of paragraph (2) be deleted:

~~The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.~~

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.
TAAHP also requests that paragraph (5) be amended to require a non-material amendment to admit guarantors that were not identified as guarantors or principals on the Org Charts submitted at the time of Application:

If identified Guarantors have changed from the Guarantors or principals identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors or ~~members~~ principals must be reviewed in accordance with Chapter 1, Subchapter C of this part.

Justification: While we agree that adding new guarantors should require a non-material amendment, such amendment should not be required when the guarantor was listed on the original application as a principal on the owner organizational chart.

Section 10.402(j) Cost Certification (Competitive and Non-Competitive HTC and related activities Only)

TAAHP requests that this revert to 2015 requirement for a 15 year proforma instead of proposed 30 year.

Justification: a 15 year proforma is consistent with the application requirements, and past TDHCA policy at cost certification.

Section 10.405(a) Amendments to HTC Application or Award Prior to LURA recording or amendments that do not result in a change to LURA

TAAHP requests reinstatement of subpart (G) permitting a de minimis increase or decrease in the site acreage without requiring Board approval.

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.

TAAHP request deletion of new subpart (H) defining the following as a material alteration requiring Board approval:

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

~~Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~

Justification: Increases in development costs and changes in financing occur frequently and should be handled administratively as they have been handled in the past.

Section 10.406(d)(3) and (4) Ownership Transfers, Non-Profit Organizations & HUBS

TAAHP membership appreciates the language changes in the proposed rules that provide for greater flexibility in cases where an award was not made out of the non-profit set-aside.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully. I have already reached out to Brent Stewart and Tom Gouris to set up a meeting to review the new underwriting rules and discuss possible alternatives to the problematic sections.

Thank you for your service to Texas.

Sincerely,

Janine Sisak
Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Tom Gouris – TDHCA Deputy Executive Director for Housing Programs
Patricia Murphy – TDHCA Chief of Compliance
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

(4) Alyssa Carpenter

October 13, 2015

Marni Holloway
Director of Multifamily Finance
TDHCA
PO Box 13941
Austin, TX 78711

RE: 2016 Draft TDHCA Rules and QAP Comments

Dear Ms. Holloway:

Thank you for the opportunity to provide comment on the 2016 TDHCA Draft MF Rules and QAP. Please find my comments attached.

Regards,

Alyssa Carpenter

2016 TDHCA Draft MF Rules and QAP Comments

10.101 Mandatory Community Assets

The current draft effectively reduces the number of options for services that can be used to fulfill this section.

While "campus of accredited higher education institution" has been added, "religious institutions," dentistry medical offices, optometry medical offices, and physician offices that are not general practice have been deleted. The residents of HTC developments, especially young children and seniors, should be receiving regular dental and optometry care. I would argue that far more residents would utilize such medical services than utilize a higher education campus. Additionally, many "religious institutions" offer events and services to foster a sense of community and which would not otherwise be reflected in the currently proposed Mandatory Community Assets choices. For example, there is one local church that offers a "senior game day" and lunch every Thursday afternoon while another offers a food pantry the last Friday of every month. These events, which would be of service to residents of HTC developments, should be considered a community asset.

Suggested language change is as follows:

(I) medical office of a general practitioner, licensed physician, dentist, or optometrist; urgent care facility or hospital;

(T) religious institution.

10.101 Undesirable Site Features

The change to (D) of "capable of refining" makes this item further reaching, when I do not understand this limitation to begin with. Why was 2 miles chosen and for what purpose? This language red lines significant portions of Places, such as Texas City and La Marque, for no apparent reason. If the concern is explosion risk, a more appropriate solution would be to require HUD blast zone calculations based on distance to the refinery for properties within 2 miles, with developments outside blast zones and/or that have appropriate remediation being eligible.

Suggested language change is as follows:

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily, unless the Applicant provides evidence of HUD blast zone calculations based on the distance to refinery features and is located outside such blast zone and/or has proposed appropriate remediation.

11.7 Tie Breaker Factors

(3) For competing Applications for Developments that will serve the general population, the Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

It does not make logistical sense to have a tie breaker that only comprehends one population type, when there is a potential to have two tied applications serving two different populations. Considering that Elderly and Supportive Housing populations are impacted by schools with regard to the Opportunity Index and Educational Excellence, and that TDHCA's prior stance on schools and Elderly developments was that highly rated schools are a characteristic of a desirable area, I propose that this tie breaker be considered for all developments.

Suggested language change is as follows:

(3) ~~For competing Applications for Developments that will serve the general population,~~ The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

11.9 Sponsor Characteristics

(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2, 3, or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation. (1 point)

This is a new compliance history system that is already contemplated during the award phase, so also including it as a scoring seems to effectively "double count" this review. 10 TAC Section 1.301 outlines the previous participation review and that Category 1 and 2 applicants will be deemed acceptable by EARAC without further discussion, whereas Category 3 and 4 applicants have to respond to concerns before receiving an award. It was my understanding that the ultimate goal of this procedure was to require developers to fix any issues that were outstanding as a condition of award. As proposed, previous participation would be a scoring item *in addition* to the award review procedure as mandated by 10 TAC Section 1.301. This does not seem reasonable especially when the review and Category designation appears to look back at issues that occurred prior to the implementation of the Category system and which have no ability to correct. We have developers that went through an EARAC review in the 2014, addressed the item, and had to respond to the same item in 2015. We also have developers that had an EARAC review that recommended an award with conditions, and the way that 10 TAC Section 1.301 is written, could continue to be "penalized" for the original issue even though it had been corrected during the award process.

At the very least, I think that using previous participation as a scoring item should be deleted for this year until developers and staff have a better understanding of the implications of the Category system and what exactly is involved in the evaluation. For

example, we have seen previous participation reviews that required responses regarding timely submitted and Board-approved amendments—I do not understand why that would be something that would look “alarming” about a developer when the Rules clearly allow for such an occurrence.

Suggested language change is as follows:

(A) The ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 Points).

~~(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2, 3, or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation. (1 point)~~

11.9 Opportunity Index

For Rural Developments:

(i) Except for an Elderly Limitation Development, the Development Site is located within the attendance zone (or in the case of a choice district the closest) of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph only, any school, regardless of the number of grades served, can count towards points; however, schools without ratings, unless paired with another appropriately rated school will not be considered.) (3 points);

This language has been changed to make it more difficult to obtain these points and I am unsure of the reasoning. In general, there is no “choice” for a child to attend one school over another, and therefore would not have a choice of attending a school that has a 77+ per subparagraph (B). My understanding was that this item is about distances to commonly utilized or required facilities, and since a family does not have a choice in the rating of the school that they may attend, I do not think this proposed change makes sense. The language from 2015 regarding the general Met Standard rating makes the

most sense and has the most value to families in that the school that the child will attend is close to the development. Furthermore, it does not make sense to basically have two senior center-type scoring items of various points—3 points here and 2 points under (v): (v) The Development Site is located within 1.5 linear miles of a senior center (2 points). Plus, such Elderly application is still being awarded points for a day care center which makes even less sense than a school because a senior can at least use the school's grounds for walking or exercise.

Suggested language change to generally revert to 2015 is as follows:

(i) ~~Except for an Elderly Limitation Development~~, The Development Site is located within the attendance zone (or in the case of a choice district the closest) and within 1.5 miles of an elementary, middle, or high school with a Met Standard Rating. ~~that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points.~~ (For purposes of this subparagraph only, any-school, regardless of the number of grades served, can count towards points; however,-schools without ratings, unless paired with another appropriately rated school will not-be considered.) (3 points);

11.9 Educational Excellence

The change to Educational Excellence that proposes 3 points for a site that has all Met Standard schools effectively de-values a site that has all schools that are Met Standard and 77+ (or 70+ for Region 11). In 2015, up to 3 points was awarded with 3 points for all schools that are Met Standard and 77+ (or 70+ for Region 11) and 1 point for at least two of three schools Met Standard and 77+ (or 70+ for Region 11). No points were granted for Met Standard schools of any Index 1 score. The proposed 2016 language awards 5 points for all schools that are Met Standard and 77+ (or 70+ for Region 11) and 3 points for all Met Standard, which means that there is only a 2 point advantage for 77+ (or 70+) schools.

Examining all schools that have an MS or IR rating and excluding those with Alternative or other ratings, less than 8% of schools are rated IR. Of those that are rated IR, many are clustered in one district: for example, over 9% of IR schools are in Houston ISD and nearly 6% are in Dallas ISD. I do not believe that points should be awarded for a rating that has been achieved for 92% of all rated schools. This scoring item should revert to 2015 language to make the scoring item meaningful.

Suggested language change to generally revert to 2015 is as follows:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

(B) ~~The Development Site is within the attendance zone of an elementary school, a middle~~

~~school, and a high school with a Met Standard rating~~. The Development Site is within the attendance zone of an elementary school and either a middle school or high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11) OR within the attendance zone of a middle and high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11). (3 points)

11.9 Underserved Area

I applaud Staff for considering other options for this scoring item; however, without accurate and objective data, I do not think such options can be included in the QAP.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);
I think this is a good change and will help to remove ambiguity and subjectivity.

(B) An Economically Distressed Area (1 point);
I would propose that this remain 2 points for those applications in EDA areas that do not have an existing HTC development.

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development (2 points);
I believe that this should remain as-is and not be changed to consider whether the Place's existing HTC development serves a different population than the Application. There is already a proposed scoring option for a census tract that does not have a same-population development in 10 years.

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population (2 points);
This is 2015 language and should remain as-is. There are fewer rural towns with even fewer census tract options than urban areas.

(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point);
I appreciate this option.

(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or

Unfortunately, I am unaware of a consistent subjective data source for this proposed score item. I think any scoring item should consist of publically available data from city, state, or federal sources, and I am not aware of any source that gives detailed information on the salaries of jobs created. The QAP used to have a scoring item that relied on SBA loan and State economic development program data, but data was not that detailed. Furthermore, any scoring item that is not official and accessible is subject to exploitation. I propose that subsection (F) be deleted and that staff and the development community revisit SBA and State incentive programs for consideration in the 2017 QAP.

(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).

Unfortunately, I am unaware of a good consistent data source to use for this proposed scoring item. Complicating this item is the fact that some census tracts changed from 2000 to 2010. For example, 2000 census tracts 32.01 and 33.00 in downtown Dallas combined to make 2010 census tract 204.00. This means that there is no data for census tract 204.00 prior to the 2010 ACS. Other census tracts had general boundary shifts in 2010 that makes any comparisons to data older than 2010 extremely difficult. This will also impact a change in language from “census tract” to “place” (should it be suggested) because places can also annex land and change boundaries thereby skewing results compared to landlocked places. For this reason, I propose that subsection (G) be deleted until more research can be done on a scoring item that has a consistent data source.

11.9 Tenant Populations with Special Housing Needs

(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development’s in the Department’s Section 811 Project Rental Assistance Demonstration Program (“Section 811 PRA Program”). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

This scoring item penalizes new developers and developers that do not have a portfolio that meets Section 811 requirements. I think that there should be some sort of incentive for developers with qualifying properties to participate that does not involve a 1-point scoring advantage. I understand that it is difficult to add new point items to other scoring categories, so one suggestion would be to change all options to 3 points but add language to subsection (A) as an incentive for those who qualify. This could include something such as the following:

(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing

Development in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application. Applications electing this subparagraph may request a LURA amendment with no fee to reduce the Extended Affordablity Period by 5 years for the existing Development participating in Section 811 per this subsection.

11.9 Historic Preservation

The separation of the Extended Affordability and Historic Preservation scoring items means that Historic Preservation now has a 5-point advantage and it is probable that a Historic Preservation application with a revitalization plan will outscore a 7-point High Opportunity application with top schools. I understand that Historic Preservation was added to legislation, but considering where this item was added in the legislation, the points proposed are too high.

SB 1316 added the following language:

SECTION 2. Section 2306.6725 , Government Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) 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:

(1) provide quality social support services to residents;

(2) demonstrate community and neighborhood support as defined by the qualified allocation plan;

(3) consistent with sound underwriting practices and when economically feasible, serve individuals and families of extremely low income by leveraging private and state and federal resources, including federal HOPE VI grants received through the United States Department of Housing and Urban Development;

(4) serve traditionally underserved areas;

(5) demonstrate support from local political subdivisions based on the subdivisions ' commitment of development funding;

(6) rehabilitate or perform an adaptive reuse of a certified historic structure, as defined by Section 171.901 (1), Tax Code, as part of the development;

(7) remain affordable to qualified tenants for an extended, economically feasible period; and

(8) ~~[(6)]~~ 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.

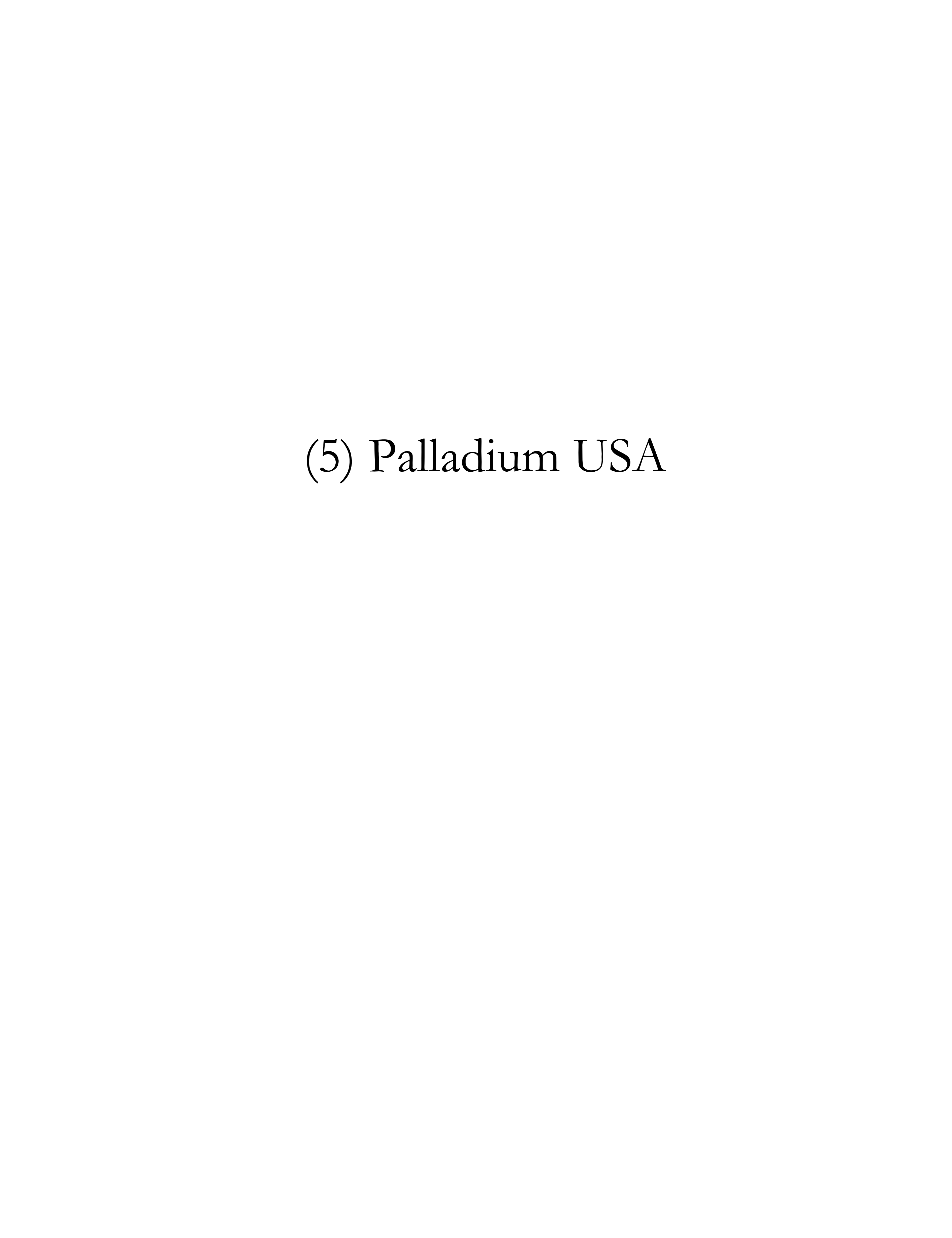
Considering the point values of the criteria items before and after new subsection (6) concerning Historic Preservation, the proposed 5 points should be reduced to 2 points.

Subsections (1) and (2) are addressed with higher points already contemplated under Section 2306.6710(b)(1).
Subsection (3) concerns Leveraging, which is currently valued at up to 3 points.
Subsection (4) concerns Underserved Areas, which is currently valued at up to 2 points.
Subsection (5) concerns Local Funding, which is currently valued at 1 point.
Subsection (6) is in question and is proposed at 5 points.
Subsection (7) concerns Extended Affordability, which is currently valued at 2 points.
Subsection (8) concerns Accessibility and is a threshold requirement.

Based on where Subsection (6) Historic Preservation was inserted into legislation, 5 points is too high and the point value should be consistent with neighboring point items. Additionally, Historic Preservation applications, which are commonly found in areas that are lower income and underperforming, should not be encouraged over High Opportunity applications that are inherently in high income, low poverty, and high performing school areas.

Suggested language change is as follows:

(6) Historic Preservation. (§2306.6725(a)(5)) An Application that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive ~~five (5)~~ two (2) points.



(5) Palladium USA

October 7, 2015

Texas Department of Housing and Community Affairs
Attn: Teresa Morales
P.O. Box 13941
Austin, TX 78711-3941

RE: Public Comment concerning the 2016 QAP and Multifamily Rules

Dear Teresa,

Our team has spent some time digesting the current draft of the QAP and Multifamily Rules and would like to give some observations and suggestions based on what we believe would be in the best interest of the industry, and will help to deliver the best products at the best locations. We understand staff's intentions to do just that and hope that input such as ours, and others, will be helpful for the Department to gain a better understanding of the real world challenges and consequences we, as developers, face when we submit to current rules in our efforts to get quality affordable communities on the ground.

One basic value that we believe should be guarded in our industry is that each of us as developers, Department staff and consultants must do our part to earn the trust of the people of Texas by consistently placing quality product on the ground and maintaining those properties, as well as maintaining positive relationships in the communities where we serve. All who have developed tax credit properties know the ugly face of NIMBYism and the fear that keeps us out of many cities and neighborhoods across the state. What our industry should be doing is developing relationships with communities in an effort to build trust. That simply cannot be done in the few months after we get the current years rules and have to turn in an application. When new point categories show up each year, it makes relationship and trust building impossible as we, must chase the points. The resulting conversation with cities all over the state is, "trust that we will do what we say, but we need your support today." No wonder NIMBYism wins over and over. Last year in Region 3 we saw every top scoring application flip to the bottom of the region because of a lack of support by cities and State Representatives. I believe we could win over the High Opportunity Areas in our state if we were given enough time to build and earn trust in these communities that fear affordable housing. But, that would take consistency in rule making and point incentives. Many of the proposed changes this year, are causing developers to abandon relationships that have been started to chase new point categories and therefore, is counterproductive to combating NIMBYism and earning the trust of our communities. I believe the Department could place new incentives each year to refine new targets without de-incentivizing high scoring areas of the previous year and my following comments are an effort to propose changes to that end. In the end, we all win when any developer in our industry earns the trust of a community and delivers a product that is consistent with the message.

11.9(c)(6) Underserved Area

First, and of high importance, is the addition of multiple ways to gain Underserved Area points. It seems the intention of additional point categories here are to help fast growing areas get a point incentive.

However, the current language creates a disadvantage to traditional underserved areas as defined in (C). Item (C) defines an underserved area as a place that has never received a tax credit allocation before. Many of these places are High Opportunity Areas with great schools in urban regions and the likelihood of NIMBYism in these areas is very high. Therefore, often, it takes multiple years of working with these communities in order to develop a relationship in order to earn their trust.

First, Item (E) states that a point may be gained by an application that is in "a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population." **This rule is simply too easy**. The reality is that most census tracts across the state fit this category and this creates a free point to be made up against traditional underserved areas as defined in (C), which are significantly harder to pursue. We propose that Item (E) be deleted in its entirety as it offers no benefit and its real effect is that it makes traditional underserved areas lose part of its advantage.

Second, it is understandable and may be worthwhile to create an incentive that promotes significant growth as a point category. However, item (F) is too vague and broad in its intentions. Item (F) grants one additional point to an application "within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located." Five miles is significant and too wide. A five mile distance creates a 10 mile circle around a development. That area is larger than most communities in Texas. If the incentive is to be in an area of significant new growth, make the incentive to be in the area. Therefore, limit the point category to be within one or two miles. Second, there seems to be a problem with definitively proving this point item to be true. What data set is the Department going to use to verify? We all know developers will work to the specific language in the rule and if the rule does not define, then letters from managers and chambers of commerce offering opinions and therefore, speculation, could be submitted. Therefore, I propose that item (F) be omitted and only item (G) remain as an incentive for applications locating in areas of significant growth as item (G) can be definitive in its proof.

11.9(c)(9) Proximity to Important Service

This category is a perfect example of the type of new rule that causes developers to abandon relationships in order to chase new points in order to be competitive. While the intention to locate development near important services is simple and clear, the distance will cause developers across the state to abandon good sites and relationships because they do not fit in this new category. I get and appreciate incentives that create separation in scoring, which this category helps to do. Therefore, I propose that this rule be revised to be similar to the spirit of the previous drafts language but instead of a threshold item, to remain a point incentive item. My suggestion is that a point incentive be given to applications that are within 3 miles of all three of these important services: Full Service Grocery Store, Pharmacy, and a Medical Office or Urgent Care Facility including hospitals. This refinement of the rule will help to incentivize development located in proximity to important services and will keep the point item hard to obtain, but will not arbitrarily limit to one mile.

10.101(a)(2) Mandatory Community Assets

Many of us here in the great State of Texas believe that churches offer support and the type of community values that are important to our residents. Churches offer programs and activities for children all the way through seniors and are an important part of any vibrant city. Therefore, we propose that churches be added back to the list of Mandatory Community Assets as proximity to churches can be an incredibly valuable asset to any property.

It is evident that staff is working diligently to deliver a QAP and Multifamily Rules that will outline criteria to incentivize positive development in the best locations. The suggestions above are our efforts to add a voice to those efforts. Thank you for your thoughtful consideration.

Sincerely,

Ryan Combs
Palladium USA

(6) Chris Boone, City of Beaumont

From: CBoone ci.beaumont.tx.us
To: Teresa.Morales tdhca.state.tx.us
Subject: 2016 Draft QAP Part II from Beaumont
Date: Tuesday, October 13, 2015 8:29:43 AM

Ms. Morales,

In addition to the comment sent yesterday on the Draft QAP, we would also request that the rule (Subchapter B--10.101.(a)3:(D)) be modified from two (2) miles to one and one-half mile (1.5). We feel that this would be a more reasonable distance requirement from the Exxon/Mobil facility that has been operating safely since 1903, employs more than 2,000 employees and is located on a transit route.

Given the extent of the petro-chemical and industrial base of our economy, a reduction in this distance requirement would be recommended. In addition, as mentioned, this extensive distance requirement would preclude our entire redeveloping downtown. Some particular sites that we would encourage affordable housing is in our new Downtown's Lake District, directly opposite our new $7 Million Senior Activity Center, skate park, lake and playground. By adjusting this distance requirement by only one-half mile, this redeveloping area would then be eligible for development.

If you need any additional information, please let me know.

Thanks,
Chris

Christopher S. Boone, AICP
Director of Planning & Community Development
City of Beaumont
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Beaumont, Texas 77701
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----- Forwarded by CHRIS BOONE/CITYBMT on 10/13/2015 08:10 AM -----

From: CHRIS BOONE/CITYBMT
To: Teresa.Morales@tdhca.state.tx.us
Date: 10/12/2015 02:34 PM
Subject: 2016 Draft QAP

Ms. Morales,

I am writing regarding some ambiguity in the proposed 2016 QAP.

Specifically, Subchapter B--10.101.(a)3:(D)

states: "Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or refineries capable of refining more than 100,000 barrels of oil daily;"

The concern that we have is how, specifically, is how the measurement to the "hazardous uses" would be done. We are working to redevelop our downtown and see affordable housing as well as market-rate housing being an important important to that redevelopment. Exxon/Mobil is located to the east of Downtown, but if staff were to measure from the Exxon/Mobil property (parking lots, etc.), this would exclude most of downtown from the process. If the distance were measured to the refining equipment and tanks (presumably to source of concern), then the two-mile requirement could be met and still allow the affordable units. We feel a clarification of this rule would be in the best interest of all parties.

If you need any additional information or clarification, please let me know.

Thanks,
Chris

Christopher S. Boone, AICP
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(7) Rural Rental Housing Association of Texas

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

RRHA of Texas Comments to the 2016 QAP **October 12, 2015**

The Rural Rental Housing Association of Texas (RRHA of Texas), an organization made up of 701 existing USDA properties in rural Texas, is submitting a response to the published 2016 Qualified Allocation Plan. Texas has the largest number of 515 properties of any state and the Association Members have in common an interest in preserving these properties, and continuing to serve the residents. Secondarily, the RRHA Members have an interest in new construction in rural areas, and we will comment on this separately.

The preservation of rural apartments, and the construction of new apartments in rural areas, require different strategies. TDHCA has made some of the most altering changes to this QAP for preservation of existing properties, which would have a significant impact on losing ground with preservation. We would like to respond to each of these issues and products (new construction vs preservation) in our remarks.

Preservation of Rural Housing

RRHA of Texas requests that TDHCA consider a bold, long-term preservation policy for existing housing that continues to serve residents and communities. This policy will become more important as the USDA properties become older, as elderly-population and mixed-population properties age, and as tax credit compliance periods expire. In that policy, we recommend a firm determination and measure of preservation need for the apartment project, and within the community. Many States provide priority points and reward preservation in their Tax Credit Qualified Allocation Plan and we suggest a review of policies of other states. RRHA of Texas will be pleased to participate in, and even lead that study and documentation of findings. Currently, this distinction is not evident in the 2016 draft QAP.

USDA Set-Aside (2306.11(d-2)

This year, TDHCA has recommended that new construction funding for the USDA 514/516 program be added to the USDA set-aside. They have recommended that **new construction**, and a 514/516 program that permits funding from **both urban and rural settings** compete with the existing and aging Rural USDA 515 properties. While RRHA agrees that the Farmworker housing is deserving, underserved, and should be funded, it has made the preservation of USDA 515 properties even more difficult by allowing new construction to compete with existing product. Absent a formal preservation policy for TDHCA, and the current practice of providing point priorities to high opportunity areas, we agree this may be the only way to fund farmworker housing.

The 2015 Tax Credit application for farmworker housing, using USDA 514 funds for new construction, requested $816,330 in credits and would have taken 26% of the available funds in the USDA Set-Aside. This would take funds from the already difficult preservation efforts. While farmworker housing is deserving, this is an unacceptable reduction in a USDA preservation set-aside where we are losing ground in the goal to preserve USDA units. The RRHA of Texas has conducted a survey within its membership of 515 existing units and received a 53.3% (nearly 13,000 units) response rate for all units in Texas and found an approximate and immediate need of $635,565,000 in preservation hard-cost funds for just over 75% of all units. The results of this survey will be attached to our comments.

Based on the TDHCA staff recommendation in the QAP draft to add USDA 514/516 new construction as a competitive application to the Set-Aside, RRHA of Texas recommends the following additions:

1) **A maximum of $750,000 award per project in the USDA Set-Aside.**
2) **A limit on one New Construction award from the USDA Set-Aside in each Tax Credit cycle for the USDA 515 and 514/516 properties.**
3) **Continued prohibition of USDA 538 new construction funding in the Set-Aside, unless there is an existing USDA 515, 514 or 516 debt attached to the property.**

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E-Mail: office@rrhatx.com

4) **Future consideration of a minimum of 10% of available funds to be Set-Aside for USDA properties, with considerations for a TDHCA comprehensive preservation policy and priority points reflecting rural preservation priorities.**

RRHA also supports a limitation of $1.5 million in the At-Risk Set-Aside, other than USDA.

11.9 Competitive HTC Selection Criteria-Preservation

(4)(B) Opportunity Index for Rural Properties-Preservation

RRHA of Texas requests that TDHCA **delete the current reward qualifiers of 1st and 2nd Quartiles** for existing rural properties in the set-asides. Existing properties have fixed locations and can not be moved. We would rather see a tiered point system for quartiles 1 and 2; and for quartiles 3 and 4 in this 2016 QAP. In future years we suggest the same number of points with **a letter from an elected official in the community stating that the existing property continues to serve their community by housing residents, and that the residents and the community would benefit by rehabbing/updating the properties. This would measure service to community, and preservation need on existing properties rather than location as is now measured in new construction.**

It is important for TDHCA to recognize that USDA Rural Development does not permit the use of rent proceeds for on-site or off-site services. Requiring an existing USDA 515 property to provide on-site services is going to require a creative financial challenge for the property. **We recommend instead adding upgrades to the existing property such as accessibility, laundry room, or community room, or upgrades to unit amenities as a replacement point category.**

The distance from rural amenities is measured for new construction that have choices in location of site, and not existing units that are fixed in location. New super stores are coming into rural communities and displacing smaller businesses. **We therefore recommend that distance for existing properties to all amenities is 3 miles.**

(5) Educational Excellence-Preservation

(B) Tiered scoring for schools is more acceptable than previous QAP requirements. We **recommend adding a mitigation for schools that have not Met Standards in rural areas, specifically an approved work out plan for 2 points.**

(8) Aging in Place-Preservation

The Current Draft has included a new category to receive up to 3 points by:

1) Making all units fully accessible (2 points)
2) Employing full time resident services coordinator (1 point)
3) Proximity to important services (2 points)

It is not possible to adapt all existing units in a USDA 515, 514/516 property to full accessibility. Moreover, not all residents want an adapted unit—they are difficult to rent to residents who do not require disabilities accommodations. Accommodations are required and should continue to be made where reasonable. We urge TDHCA to delete the concept of fully accessible. Additionally, as we mentioned earlier, USDA does not permit rent proceeds to be used for on-site services, and we recommend deletion of a full time resident services coordinator. Proximity to important services needs to be further defined, an existing property can not be relocated to achieve the Departments new construction goals. We recommend the Department focus on priorities and points for existing properties as a separate category.

New Construction and Preservation

(6)(f) Underserved Area—preservation and new construction

RRHA is concerned with the Departments ability to verify points for new business, new hires, and to require new construction. **We urge the Department to expand this category to include business expansion and addition of employees and space. Business expansion can be proven with construction plans, or site acquisition, and verification of business hires can be provided by the HR department of the expanding business.**

(7) Tenant Population with Special Needs-preservation and Rural New Construction

The permissible goal of allowing points for 811 units in properties other than the property in the current application round places existing rural properties at a disadvantage, and penalizes newer developers, developers from other states, and USDA developers who have focused their entire development career on constructing, managing, and maintaining rural properties. **This category needs to be eliminated in the USDA Set-Aside and for all rural properties as it serves no purpose but to reward developers with urban properties who convert to 811 units. Furthermore, when TDHCA develops a workable policy to accommodate the 811 funds, it should not further penalize the preservation of USDA units.**

(8) Aging in Place (B) "The Property will employ a full-time resident services coordinator on site ...(I) a minimum of 16 hours per week for Developments of 79 Units or less..."

Per our earlier comment under 4(B) Opportunity Index, USDA does not permit properties to use project funds to pay for services, and so it will be impossible for any USDA property to get these points. A smaller property cannot afford a full time service coordinator, even at 16 hours per week. We recommend language instead requiring the "**property will provide appropriate services for elderly residents with at least one event per month." We recommend instead adding upgrades to the existing property such as accessibility, laundry room, or community room, or upgrades to unit amenities as a replacement point category.**

Tie Breaker

The last tie breaker measures the proximity to the next closest tax credit property. We recommend instead the previously proposed language **measuring the distance to the next closest tax credit property of a like-kind resident population."**

Definitions—Preservation and New Construction

Elderly Development

We are requesting TDHCA to clarify Elderly Development and Elderly Preference Definitions, particularly as they relate to Project Based Section 8 and USDA 515 properties. These definitions appear to conflict with some of the existing rules. RRHA is requesting not only clarification, but explanation and policy behind the changes. We see the definition changes as detrimental to some elderly developments and unless there is substantiated policy reason for the change, we recommend the definition of elderly revert back to the 2015 QAP.

Rural Area

RRHA would like to clarify that USDA 515 projects originally built in qualified rural areas, will continue to qualify as rural properties under the USDA Set-Aside for preservation purposes, providing the project retains the USDA 515, 514/516 funding.

Thank you for the opportunity to comment on the above changes to the 2016 QAP.

Respectfully,

Angie Ruddock, President, RRHA of Texas

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

515 Survey Results

Results of the USDA 515 Property Condition Survey conducted by the Rural Rental Housing Association of Texas, is a significant sampling of USDA 515 properties and can be used to make certain assumptions about the condition of the overall portfolio in Texas—the largest number of properties in any state in the U. S. According to Jonathan Bell of Rural Development in Texas, there are 705 properties and 24,212 units that make up the Texas USDA 515 portfolio. Based on the universe of potential respondents, we have information from 341 properties, or 48.3% of all properties; and 12,914 units or 53.3% of all units in Texas.

The property owners were asked to assess the condition of their own portfolio hard cost needs in $10,000 increments to determine USDA preservation funding needs for Texas. They were also asked about the age of the property—when it was first placed in service, along with a few other questions.

The respondents to the survey are RRHA of Texas members who make up the vast majority of USDA 515 properties in Texas. Thus, we can conclude over 75% of all units in Texas need rehab in the amount of $20,000-$50,000 per unit, or an average of about $35,000 in hard construction costs. That immediate need would amount to approximately $635,565,000.00 plus all necessary program and financing costs. Fifteen percent of all units, or about 3,632 units need no rehab, or have been recently rehabbed.

The results follow.

Overall, the per unit rehab needs were fairly evenly divided among the $20,000-$30,000 (3344 units or 26%); $30,000-$40,000 (3306 units or 26%); and $40,000-$50,000 (3146 units or 24%), making $20,000-$50,000 a common amount of hard cost rehab requirement. No financing costs, construction interest, architectural and engineering, developer fees, etc. were included in these estimates which can add substantial cost per unit to rehab the properties. Because the type of financing fees for rehab can vary depending on the source of funding, it was not included in the estimates. Fifteen percent (15%) of all respondents units (1969 units) have been recently rehabbed, or need no rehab, and 1011 units (8%) need less than $20,000 in rehab. Thirty-six units (36) or 0.3% need more than $60,000 per unit in rehab.

The age of the properties was most frequently 15 to 35 years old, with nearly 20% more than 35 years old. Sixty (60) properties, or 18% were placed in service prior to 1980; One hundred thirty-eight (138) or 40% were placed in service between 1980-1990; One hundred twenty-five (125) or 37% were placed in service between 1990-2000; and the remainder were placed in service after 2000.

Other information reported on the survey: Thirty (30) properties were the only properties in town—9% of all responding properties. Fifty-seven (57) properties need laundry rooms—17% of all responding properties. Ninety-eight (98) properties need a community room—29% of all reporting properties.

These facts, along with the scarcity of preservation funding, and the competitive nature of the available funding sources, make this a challenge for which we need to find new solutions if these properties, the rural communities in which they're located, and the residents who live in them, are to continue to have decent, affordable apartment communities.

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(19) R.L. “Bobby” Bowling IV

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October 14, 2015

Kathryn Saar and Tom Gouris
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2016 QAP AND PROPOSED 2016 UNDERWRITNG RULES

Dear Kathryn and Tom,

We offer the following comment on the published 2016 Draft QAP:

1. **Tenant Populations with Special Housing Needs—11.9(b)(2):**

We support a methodology whereby tax credit developers with experience and a track record of excellence in compliance is rewarded. The 2015 QAP offers a *PENALTY* for developers with a bad track record, however, the action of an excellent performer is treated the same as a developer that has *ABSOLUTELY NO TRACK RECORD* of performance at all in the tax credit industry. This TDHCA policy of ignoring good performance runs completely contradictory to the private sector, as an excellent record of performance is the most important factor private lenders and investors consider in evaluating a proposed development. It is time TDHCA properly take into account this crucial evaluation factor and use points to incentivize good behavior. However, we believe the current proposal in the draft QAP still does not properly address the problem, as the proposed point category again only penalizes bad behavior and puts experienced developers with excellent track records in the same boat as developer with no record of performance whatsoever in the complex world of tax credit development. We propose the following language change to this point item:

Previous Participation Compliance History (up to 2 points):

(i) *The portfolio of the Applicant has a compliance history of a category 1 as determined in accordance with 10TAC 1.301, related to Previous Participation (2 points), or*

(ii) *The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10TAC 1.301, related to Previous Participation (1 point)*

The definition of the term "Applicant" in the rules allows for a partnership with an experienced developer for a developer without a track record who seeks to receive the point item. This is common practice in the private sector world—if an entity has *NO EXPERIENCE* in apartment development, a private sector bank or investor would look long and hard before approving a proposal from that entity (probably to a much greater extent than 1 or 2 points in 100-point evaluation matrix) and would likely suggest some type of joint venture or partnership with an entity that not only has experience, but a good track record. The point item as we propose it brings TDHCA evaluation in line with the private sector world of finance, which has become extremely difficult to navigate through since the 2008 financial crisis.

2. **Criteria to serve and support Texans most in need—11.9(c)(7)**

We understand and support the Department's efforts to place 811 units in existing portfolios due to time concerns with placed-in-service deadlines and other risks of relying primarily on proposed developments to place 811 units. We support language giving a minimal 1 point incentive to developers willing and able to place 811 tenants in qualifying existing units. We also support other incentives, such as increasing developer fees to 20% or shortening extended use periods by 5 years as proposed by TAAHP to accomplish this Department goal as well.

We offer the following comments regarding the published 2016 Draft of Subchapter C—Underwriting and Loan Policy:

1. **Designation as Rural or Urban—10.204(5)(B):**

We support this proposed language. It is well thought-out and in accordance with statute. We appreciate staff's research into this item and its invitation for feedback during the 2015 roundtable process.

We offer the following comments regarding the published 2016 Draft of Subchapter D—Underwriting and Loan Policy:

1. **Market Rents—10.302(d)(1)(A)(i):**

We understand the Department's concern with trying to underwrite market rents in low-income developments, as the "stigma" associated with low-income units can affect the amount of rent charged on market units in the same development. However, our private sector underwriters are currently using a 10% increase over 60% AMFI rents in developments we have recently been awarded. We feel that this is a reasonable assumption, and we have been able to achieve those rents thus far in our 2 mixed-income awards from 2013 that have recently been placed in service (North Desert Palms and Verde Palms). Granted, each of those deals have over 34% market units, but in the El Paso market, where we work exclusively, the low-income units do not carry the same "stigma" as is possibly seen in other markets. We propose that the Department look to the private sector lender and syndicator community for guidance in this area for each market, as markets in Texas can vary greatly due to differences in what is going on with each local economy. The Department has wide latitude to accept or reject market rents as proposed in applications as per the current rules, hence, we oppose any rule change to this category.

2. **Developer Fee—10.302(e)(7)(A):**

We understand, through various roundtables held by Department staff, that this rule change is precipitated by the notion that Public Housing Authority ("PHA") Rental Assistance Demonstration ("RAD") projects are at a much greater risk of obtaining funding, due to the uncertainty of the financing. In the same line of reasoning, Developments with higher debt are also of a much greater risk to the Developer. Further, a rule that changes the playing field to benefit ONLY PHAs is unfair to private sector developers. Hence, we propose the following rule change to bring riskier, high-debt deals into the same preferred treatment as PHA/RAD deals:

> *For Developments with at least $25,000 per Unit in conventional debt that will not come from an Affiliate of the Developer or Applicant, nor from a Related Party of the Developer or Applicant, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.*

3. **Developer Fee—10.302(e)(7)(F):**

We understand the Department's concern regarding "rewarding" a developer who greatly underestimated costs at the time of application. However, in the development world, cost increases on items beyond a developers control are commonplace. Things such as impact fees and permit fees are constantly

inflated well-beyond the cost of inflation by local governments and while some of us go to great lengths to fight these fees, it is still well beyond our control. Likewise the costs of goods and services can be greatly influenced by things such as construction in China or OPEC actions regarding the world oil market as recent history has shown us. **We propose a reasonable increase in developer fee of up to 15%** if it can be proven at cost certification that such a cost increase was justified and beyond the Developer's control**Developer Fee—10.302(**

We offer the following comments regarding the published 2016 Draft of Subchapter E—Post Award and Asset Management Requirements:

1. **Cost certification—10.402(j):**

We do not understand the reasoning behind changing the requirement of a 15-year pro-forma to a 30-year pro-forma and **we strongly oppose this change.** There is no reasoning given in the Department's presentation in the Board book as with other changes in this section, nor any discussion of this proposed major change during any of the 2015 roundtable discussions. Thus, we hope that the insertion of 30 years is possibly a typo. Our company had a long debate before the TDHCA Board over this issue back in 2006 on our Mission Palms development, at which time the Board decided unanimously that a 30-year pro-forma was not reasonable to use for a variety of reasons (i.e., non-HUD financing typically has either a 15 or 18 year term, so the debt must be refinanced at that time anyway on the vast majority of 9% tax credit deals, so the debt structure will change at that time anyway). In a low-income, low rent area like El Paso and the rest of the Texas border, pro-forma rent projections beyond year 15 often create a situation where operating expenses have increased to the point of a DCR of below 1.15 and creates an unfair situation for border developments—a concern that if realized, would be addressed by the private sector lender and developer during a year 15 or year 18 refinancing. However, if the Department wishes to impose this new standard on TDHCA-financed or HUD financed developments ONLY then we are not opposed.

This concludes our comments for the 2016 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV
President

(21) Structure Development

October 14, 2015

Ms. Marni Holloway
Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701

RE: 2016 QAP and Multifamily Rules Public Comment

Dear Ms. Holloway and Ms. Morales:

As a housing and community development professional on behalf of Structure Development, I would like to provide the following public comment on the proposed Multifamily Rules and 2016 QAP in numerical order.

MULTI FAMILY RULES

Subchapter B - Site and Development Requirements and Restrictions
Mandatory Community Assets §10.101 (a)(2)

Schools should count as an asset for Elderly Limitation Developments as well as for family developments, for all the reasons cited below in the QAP comments. Suggested language:

(J) public schools ~~(only eligible for Developments that are not Elderly Limitation Developments)~~

Undesirable Neighborhood Characteristics §10.101 (a)(4)(B)(ii)
Please consider adding an alternative to reporting crime data. Suggested language below.

The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. or other local-data source such as precinct reports.

Mandatory Development Amenities §10.101(b)(4)
Please consider allowing Packaged Terminal Air Conditioning (PTAC) units in At-Risk and Rehabilitation deals. Many older apartments have low ceilings or are made of concrete block and central air conditioning is not a cost effective solution. High efficiency PTAC units are adequate for small units such as efficiencies and one bedroom units found in many preservation projects. Permitting PTAC units

saves valuable resources for other more measurable and meaningful improvements. Recommended language is below.

All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation).

Subchapter C - Application Submission Requirements
Non Profit Ownership § 10.204(14)

Please remove language requiring a letter from an attorney verifying tax exemption. This will be costly and time consuming to obtain. Many attorneys will not want to verify something that is out of their control (because only Appraisal Districts can officially grant the exemption). Current regulations allow an applicant to provide up tax exemption after award. Please continue this practice.

QUALIFIED ALLOCATION PLAN

Tie Breaker §11.7

When utilizing the poverty rate for a tie breaker, we request that TDHCA utilize the full and exact real number, as provided by the American Community Survey, without rounding. TDHCA's Site Demographic report uses one decimal place rather than the full number. Recommended language for this item is as follows:

(2) Applications proposed to be located in a Census Tract with the calculated lowest poverty rate, as published by the American Community Survey, as compared to another Application with the same score.

Opportunity Index §11.9(c)(4)

We are in support of the changes to Section 11.9(c)(4) with the exception of substituting proximity to senior services for schools in rural regions for Elderly projects. Public Schools are a key community asset in rural Texas and worthy of the 3 points regardless of the population. Education Secretary Arne Duncan agrees defining our schools as community centers that serve the neighborhood 24/7. They provide volunteer opportunity for seniors. Schools have public open space for recreation, fitness, and social interaction. They are places to gather, hold community meetings, and even vote. "Services Specific to a Senior Population" is vague. A person 55 years or older seeks many of the same services as a general

population resident and benefits from proximity to a public school. We recommend keeping the language from the 2015 QAP as written below.

~~Except for an Elderly Limitation Development,~~ The Development Site is located within the attendance zone and within 1.5 linear miles of an elementary, middle, or high school with a Met Standard rating ... (3 points);

~~(B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points.~~

Underserved Area §11.9(c)(6)

We support awarding a census tract that has not received an allocation serving the same Target Population within 10 years 1 point. Please clarify what milestone will be used to measure the time. We recommend the "Year" column on the Property Inventory tab of the Site Demographics spreadsheet provided by the Department. Please note that the "Year" date is the year following the "Board Approval" date in a few instances.

We also support incentivizing areas with commercial growth. However, as written, it is difficult if not impossible to verify a "new business" with a "new facility" with at least 50 persons above the median income. What is new: new to city, new to state, incorporation date? Does an expansion count as a new facility, what about a new building(s), or an addition? Finally, there is no way to verify salary data. The on the map census tool (url: http://onthemap.ces.census.gov/) is an objective and quantifiable method for measuring jobs within an exact radius of a site. We recommend using a 10:1 ratio for the number of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units. This metric will aid in housing Texans with convenient access to jobs. If the *on the map* census tool is not utilized, I request that this item be removed. As written, it is likely to be abused. Recommended language is as follows:

(F) A site with a 10:1 or higher ratio of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units, as evidenced by the U.S. Census Bureau's on the map tool.

Positive and aggressive population growth is also another objective criteria for awarding an underserved point. However data is not available at the census tract level. Figures are only available at a Place level. The only way to measure a 10 year span is to go back from 2010 to 2000. This time frame is not relevant and outdated by 2016. The newest data sources that come closest to a 10 year spread is the latest

American Community Survey data (2013) compared to 2010 American Community Survey. Numbers from 2003 are not available. Recommended language for this item is as follows:

(G) A ~~Census Tract~~ Place, or if outside the boundaries of a Place, a county which has experienced growth increases in excess of 120% of the ~~county~~ Place population growth over the past 3~~10~~ ~~years provided the census tract does not comprise more than 50% of the county~~ as evidenced by American Community Survey 2010 to 2013 data.

Tenant Populations with Special Housing Needs §11.9(c)(7)
As written, rural developers who do not have any urban units are disadvantaged by one point. The following language change is suggested:

A. *Applications in Urban Regions may qualify for three (3) points . .*

Aging in Place §11.9(c)(8)

We support designing units for individuals to age in place gracefully and with dignity. Based on our experience requiring 50% of units to be Adaptable reasonably accommodates this policy. Recommended language is as follows:

(A) Fifty (50) percent of the ~~All~~ Units are designed to be fully ~~accessible~~ adaptable (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities".

Concerted Revitalization Plan §11.9(d)(7)

We agree that "the requirements for concerted revitalization in a Rural Area are distinct and separate from the requirements related to concerted revitalization in an Urban Area." However, we do not believe that Rural Areas should yield a lower scoring potential than Urban Areas under this category. Currently Rural Areas are only eligible for 4 points under this category while Urban Areas are eligible for 6 points. We are unclear what policy objective, if any, this scoring disparity fulfills, particularly considering the ICP lawsuit focused on Urban Areas. The scoring should be adjusted (without increasing the requirements) so that Rural Areas are also eligible to receive the same 6 points as an urban concerted revitalization plan under this category.

Cost of Development per Square Foot §11.9(e)(2)

Sections 11.9(e)(2)(A)(iv) and 11.9(e)(2)(E)(ii) require updating to correspond correctly with the proposed scoring point changes to the High Opportunity category.

Moreover, all of the costs per square foot in section 11.9(2)(2) should be increased by at least $10, and preferably by $12. Since 2013, construction costs have increased 1% per month. This means that in one year, costs increased by 12.68%. Our firm has documentation of such increases in dated bids, if you would like more evidence for this item.

Historic Preservation §11.9(e)(6)

The environmental, economic, and social benefits of the proposal historic amendments are numerous. We support the changes as written.

Third Party Request for Administrative Deficiency §11.10

We support the proposed language in Section 11.10 to change what was formerly called the "Challenge" Process. In addition to and in order to support this proposed change, we would like to suggest that the Department post the Application deficiencies and Applicant responses to the Department website throughout the review period. Doing this will not only help alleviate the administrative burden that requests for this information place on the Department, it will also increase the transparency of the review process.

Thank you for considering this input on the 2016 QAP and Multifamily Rules. Feel free to contact me if you have any questions at 512.473.2527.

Sincerely,

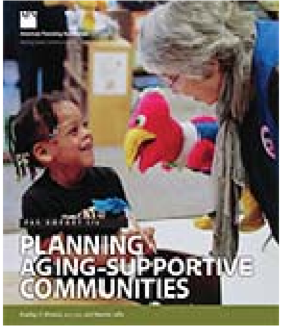
Sallie Burchett, AICP

Teresa Morales

From: Sallie Burchett [sallie@structuretexas.com]
Sent: Wednesday, October 14, 2015 7:49 PM
To: Marni.Holloway@tdhca.state.tx.us; Teresa Morales
Cc: Sarah Andre

Subject: Re: 2016 Rules and QAP Public Input

As a follow up to the "senior services" definition, I found a great resource guide of strategic recommendations to help craft appropriate aging-supporting plans and programs: Planning Aging-Supportive Communities. Perhaps we can study the report and develop sound recommendations for the 2017 policies.



America is aging fast.

In 2010, 40.3 million people in the United States were age 65 or older, 12 times the number in 1900. The fastest-growing group of older adults is 85-plus, and the trend is likely to continue through 2050 and beyond.

How can communities rise to the challenge? *Planning Aging-Supportive Communities* is a guide to help planners and public officials meet the needs of older residents. Safe and affordable housing is one of the most basic needs. So is the ability to get around town, whether driving, walking, cycling, or taking transit. Public spaces, services, and health programs all must be addressed.

In clear, concrete terms, this new report shows how to use the resources already in place, and what features to add, to create communities that support full, fulfilling — and long — lives.

Sallie Burchett, AICP, LEED Green Associate

On Wed, Oct 14, 2015 at 5:52 PM, Sallie Burchett <sallie@structuretexas.com> wrote:
Dear Ms. Holloway and Ms. Morales.

Please see the attached letter detailing our input on the proposed 2016 Rules and QAP requirements. Feel free to contact me if you have any questions. Thank you for considering the requests.

Sincerely,
Sallie Burchett, AICP, LEED Green Associate

(22) Cynthia Bast, Lock Lord

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Cynthia L. Bast
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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 15, 2015

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER A**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter A.

General Comment: Please see our General Comment with regard to Subchapter C, as such comment applies to the comments herein.

Section 10.3(a)(35) Definition of Developer

Comment: The word "fee" in the penultimate sentence needs to be capitalized.

Section 10.3(a)(107) Definition of Qualified Purchaser

Comment: From my searches, I see this term is only used twice, both times in Section 10.408 regarding qualified contracts. This is a good definition and should probably be used more consistently, especially in the ownership transfer section of Subchapter E.

Section 10.3(a)(115) Definition of Right of First Refusal

Comment: As you will see in my comments on Subchapter E, per HB 3576, the realm of entities that can acquire under the ROFR process has been expanded to include any entity permitted under Section 42(i)(7)(B) of the Internal Revenue Code, and any entity controlled by such a qualified entity. I am recommending we implement the use of the term “Qualified Entity” to be consistent with statute. If that is done, then the reference in (115) to a “Qualified Nonprofit Organization or tenant organization” should instead refer to a Qualified Entity.

Section 10.4 Program Dates

Comment: There is a reference to “10 TAC §1_”. The proper section number needs to be inserted.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2015

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER C**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter C.

General Comment: Throughout the Rules, TDHCA has various ways to refer to Persons who are involved with an Application – Applicant, Affiliate, Principal, Development Team. These different terms are used in different locations. Sometimes, their usage creates unintended burdens or infeasibility for Applicants. The goal should be uniformity and consistency in the Rules. Ultimately, each Application contains organizational charts to identify the proposed Development Owner, the entities that will be part of the ownership structure, and the individuals that will own or Control those entities. Those organizational charts need to be the hub of the wheel hosting the various spokes (ineligibility, previous participation, etc.).

Certain kinds of organizations, such as non-profit organizations, governmental bodies, and public corporations, require different treatment because Control and governance of these entities is so different than private, closely-held organizations. These organizations tend to have larger boards of directors. Unlike private, closely-held organizations, non-profits, governmental bodies and public corporations are not generally run by those who own the entity or serve on the board. They are operated on a day-to-day basis by a few officers and/or employees. The board of directors is responsible for policy directives, and the officers and/or employees are responsible for implementation. Thus, we have had multiple experiences where board members of non-profits, governmental bodies, and public companies are uncomfortable with signing certifications required by TDHCA. In one instance, a highly experienced and valued board member of a governmental body chose to resign from the board, rather than sign

the TDHCA certification required, because the certifications required went beyond his personal knowledge. We recognize that TDHCA has attempted to revise its Application form documentation to address these concerns, but we believe improvements are still needed.

Section 10.202(1) Ineligible Applicants

Comment: The opening paragraph applies this standard to any party on the Development Team. Development Team is defined broadly to include any Person with any role in the Development. That includes not only the Developer and Guarantor but also minor players like lawyers, architects, or even construction subcontractor. All of those parties technically play a role in the Development and, by the rule, would be held to this standard. It is unconscionable to ask an Applicant, Developer, or Guarantor to make representations and certifications as to every single member of the Development Team.

Recommendation:

Going back to the comment above as to the organizational charts, the Ineligibility should apply solely to the Persons shown on the charts for the Applicant, Developer, and Guarantor.

Section 10.204(14)(C) Nonprofit Organizations

Comment: Requiring a non-profit organization that intends to seek an ad valorem tax exemption to obtain an opinion of counsel for the Application is overly burdensome and expensive. As a practical matter, when our Firm issues opinions on ad valorem tax exemptions, our client has gone through the pre-determination process with the local appraisal district, and we give the opinion based upon the pre-determination from the appraisal district. There is not sufficient time in the Application process to obtain a pre-determination from the appraisal district in order to issue the opinion. Further, we do not understand the purpose of the final sentence of the paragraph. A PILOT agreement is totally different from an exemption and is only utilized when a property actually has an exemption by right.

Recommendation:

Remove subparagraph (C). Alternatively, insert the following:

Any Applicant proposing a Development with a property tax exemption must include a letter from an attorney, identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 14, 2015

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER B, SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter B.

Section 10.101(a)(2)

Recommendation/Consideration:

Subparagraph (D). The new parenthetical seems odd and without any meaningful purpose. Some small retail establishments understandably require that minor children must be acompanied by an adult. We recommend removing the parenthetical.

Subparagraph (L). Does the community organization need to have its own physical facility, like a meeting lodge? For instance, some Kiwanis or Rotary Clubs will meet monthly at a local restaurant. In that case, would an Applicant receives points under both (F) and (L) simply because the community club meets in that restaurant?

Subpararaph (N). Can this include retail postal service establishments, like a FedEx/Kinkos?

Section 10.101(a)(4)

Recommendation:

Should the Board ~~uphold staff's recommendation or~~ make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

Reasoning:

Staff's recommendation could be eligibility, ineligibility, or even neutral. This language could therefore add confusion. For the concept presented, it is sufficient to say that a Board determination as to ineligibility is not appealable.

(23) New Hope Housing

October 14, 2015

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Delivered via email

Dear Teresa:

I am writing to offer additional comment on the 2016 draft Uniform Multifamily Rules and Qualified Allocation Plan. As a respected and leading developer of Supportive Housing, we believe the following changes would better serve the very low income and most vulnerable populations in Texas, and we hope you will make the following revisions.

Multifamily Rules - Subchapter B – Section 10.101(a)(4)(B)(ii)
Undesirable Neighborhood Characteristics – www.neighborhoodscout.com

Once again, please adjust the required use of www.neighborhoodscout.com. This costly $40/month subscription service, which in 2014 the Department thoroughly vetted and found to have questionable data sources, is simply an ineffective tool by which to measure the quality of a neighborhood. As other developers and market analysts mentioned at the September 11, 2015 Board Meeting, census tracts can border one another, and yet be worlds apart in terms of opportunity and crime. Houston has many perfect examples: vibrant Downtown Houston borders multiple high crime areas. Infamously high crime areas in southwest Houston border the affluent Meyerland area.

In addition, some of these so-called “blighted” tracts near downtown Houston have tear-down homes on the market for $250,000, with renovated single family houses selling well above $500,000. Millennials and boomers alike are gravitating to urban cores, where accessibility to employment, restaurants, and recreation is a true quality of life enhancement. This creates a beautifully diverse mix in the community, which helps to lift up areas that have historically struggled with high crime and blight.

In addition, our own research of locally published crime data cannot replicate the disproportionate scores for violent crimes per 1,000 residents listed on neighborhoodscout.com. Our in-house research involved defined census tracts for several areas of the city that score poorly on neighborhoodscout.com. When we pulled the easily available Houston Police Department Beat Reports, which detail each crime by address and date, we found that the number of actual violent crimes in these areas was far below the standard of 18 per 1,000.

- For example, in Houston’s vibrant and rapidly gentrifying East End (where you would be lucky to find a new townhome for less than $350,000), the reported number of violent crimes per 1,000 as detailed by neighborhoodscout.com *was greater than 5 times (5x) the actual violent crimes reported on the beat reports for the exact same tracts*. This deeply concerns us, and

hopefully you too. We would be happy to share with you additional specifics about these findings, upon request.

In summary, neighborhoodscout.com uses a set of metrics that are simply impossible to replicate using publicly available data. And many projects that have unsubstantiated high crime scores on this website would be forced to seek Board review and approval, creating significant additional workload and paperwork for Department staff, the Board, and the developer. This can be easily avoided by providing an alternative method to measure the crime statistics of an area. New Hope Housing proposes the following language:

> *(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com.*

Multifamily Rules - Subchapter B – Section 10.101(a)(4)(B)(iv)
Undesirable Neighborhood Characteristics – Met Standard Schools

Once again, please remove from Undesirable Neighborhood Characteristics that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. Houston has open enrollment charter schools, irrespective of the neighborhood where residents live. In addition, creating this additional barrier ensures that no new quality affordable housing is constructed in already gentrifying urban areas. Furthermore, this rule does not take into account single room occupancy (SRO) developments that only lease to adults, who have no children with need or use for higher performing schools. Rightfully, Elderly Limitation developments have achieved exemption, and so too should Supportive Housing. Please add the following language to the last sentence of the rule:

> *"Development Sites subject to an Elderly Limitation or Supportive Housing are considered exempt and do not have to disclose the presence of this characteristic"*

Qualified Allocation Plan Section 11.9(c)(8)
Competitive HTC Selection Criteria – Aging in Place

Please provide an opportunity for Supportive Housing, in line with the alternative the draft reflects for "Aging in Place." New Hope currently has nearly 1,000 adult residents, and disadvantaging supportive SRO housing simply does not make sense. There are already many barriers to filling this housing void, so requiring high performing schools to compete with traditional family deals just creates one more hurdle, when the fact is no school aged children live in SRO housing. This can be accomplished simply by adding the following language:

> *"An application for an Elderly Development, or a Supportive Housing SRO Development, may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence)."*

Qualified Allocation Plan Section 11.9(e)(2)(B)
Cost of Development per Square Foot

Recent years have shown dramatic increases in construction costs, particularly in the major cities. As a direct result of this activity, overall costs are escalating. Houston has seen a dramatic 20% increase in multifamily construction costs over the past two years and while forecasters are projecting a leveling off of costs, they do not anticipate any significant decreases. As a result of these increases, Supportive Housing is at an even greater disadvantage. Supportive Housing includes larger than average community spaces, increased numbers of social service offices, and resident-centered amenities – all designed to help keep the vulnerable individuals and families stably housed. In spite of these sustained increases, the TDHCA has not made adjustments to the cost per square foot rule since 2013. It is time for an increase, and we respectfully propose the following language:

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

- *(i) The Building Cost per square foot is less than $90 per square foot;*
- *(ii) The Building Cost per square foot is less than $95 per square foot, and the Development meets the definition of a high cost development;*
- *(iii) The Building Cost per square foot is less than $125 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development;*
- *(iv) The Hard Cost per square foot is less than $110 per square foot; or*
- *(v) The Hard Cost per square foot is less than $120 per square foot, and the Development meets the definition of high cost development.*
- *(vi) The Hard Cost per square foot is less than $150 per square foot, and the Development meets the definition of both a high cost development AND a single room occupancy Supportive Housing development.*

In addition to the detailed amendments above, all concerned with New Hope express genuine appreciation for reinstatement of the 50 square feet of common area space per unit for Supportive Housing. This makes a significant impact on project feasibility and we are thankful the Department responded to the Supportive Housing community's needs in this regard.

I hope you know this letter brings with it my utmost respect and appreciation for the work you do, and for the opportunity to offer comment. Thank you for your willingness to dialogue with the developer community. The changes I am requesting would increase the feasibility of direly needed Supportive Housing across the State of Texas. Should you wish to speak with me personally, I welcome hearing from you at any time via my cell at (713) 628-9113.

Sincerely,

Joy Horak-Brown

Joy Horak-Brown
President & CEO

CC: Tim Irvine, Tom Gouris, Marni Holloway

(24) Mary Henderson

From:	MARY HENDERSON
To:	teresa.morales tdhca.state.tx.us
Subject:	Public Comments for 2016 QAP and MF Rules
Date:	Thursday, October 15, 2015 10:21:18 AM

Teresa,

My public comments on the Draft QAP and Multifamily Rules for 2016 are focused on the radius limitation for important services of full service grocery and pharmacy for the proposed scoring of 1 point each, as well as my interest in seeing churches retained as a Community Asset (which is recommended in the TAAHP membership letter of recommendations).

Otherwise, I am in agreement with the changes/modifications proposed by the TAAHP membership.

Specifically, I am requesting a change in distance to 1.5 miles for Urban Developments to score 1 point each for proximity to 1) a full service grocery and 1) a pharmacy. I feel that if the allowable distance is being changed for Rural Developments from a 2 to 3 mile radius, then a commensurate change (50% extension of the radius) should be applied to Urban Developments, because of the more intense land uses, commercial zoning which typically requires rezoning and higher land costs that are encountered in Urban areas in proximity to these services. These services are most often located in heavily retail areas which often are almost fully built out, making it extremely difficult to find affordable tracts of suitably large land upon which to construct affordable multifamily developments.

I propose the following language be adopted for the 2016 QAP:

Qualified Allocation Plan

Section 11.9 (c)(9) Competitive HTC Selection Criteria/Proximity to Important Services

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one-and-a-half (1.5) mile radius for Urban Developments and a three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.

(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

I have been seeing an associated negative impact from attempting to locate Urban Developments in a tight one-mile radius of important services. That is the "domino" effect that also impacts one or two highly rated schools that lie within this tighter radius. The net effect is growing pushback from families and school districts. They are fearful that multiple projects in the same tight radius will have a negative impact on teacher/student ratios, increase the percentage of economically disadvantaged students in these nearby schools and lower test scores. I know of at least one instance this past year when parents and school board members then complained to the State Rep who opposed and ultimately defeated the Urban Development. I am fearful that unless more is done to create better dispersion of Urban Developments (such as extending this radius requirement), that more and more communities will be opposing affordable MF development.

Thank you,
Mary

Mary Henderson Associates
Direct: (512) 931-3713
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(28) Arx Advantage, LLC

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October 15, 2015

Texas Department of Housing and Community Affairs
Attention: Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Ms. Morales:

We appreciate the opportunity to provide comment to the Uniform Multifamily Rules, Qualified Allocation Plan and Real Estate Analysis Rules.

§10.101(a)(2) Mandatory Community Assets
We support TAAHP's recommendation for churches/religious institutions to be added back to the list of Mandatory Community Assets.

These organizations provide many services that the tenants we serve need and use. It makes logical sense that these organizations be included as Community Assets.

§10.101(b)(5) Common Amenities, §10.101(b)(6) Unit Requirements, and §10.101(b)(7) Tenant Services
We Support TAAHP's recommendation to request the timeframe for these items to be returned to the Section 42 fifteen (15) year Compliance Period instead of the Extended Use Period as the current language in the draft rules is requiring.

§11.9(b)(2) Sponsor Characteristics
We believe at this point in time, this point category has not been evaluated enough to be appropriately implemented. Developers/Applicants do not know what compliance category will apply to them; therefore, they will not know what score to attach to this criteria.

An alternative recommendation would be to put this as a placeholder for the 2017 QAP and allow the Developers/Applicants to go through the process in the 2016 cycle without the score actually being counted. This will at least give Developers/Applicants a potential look at what will happen in 2017 and this can be better evaluated for 2017.

§11.9(c)(6)(F) & (G) Underserved Area
While we applaud the Department for trying to find more ways to spread out points and accepting suggestions to accomplish this goal, both of these new additions to the underserved area cause concern. The Department needs to state a clear reliable third party source that will be acceptable for obtaining this data. We do not believe a letter

from a city/county official is appropriate and can be subjective and a strong case for challenges/administrative review. For (G) specifically, will this be ACS data, if so, which ACS data source.

§11.9(c)(7)(A) Tenant Populations with Special Housing Needs

We support the Department's efforts to encourage participation and expedite the allocation of the 811 Program Funds; however, we do not support awarding points to applications that are not in eligible areas. This scoring item eliminates many developers in the state that have existing portfolios in non-811 eligible MSA areas, along with new developers to the program and to the state of Texas.

As an alternative, the 811 program can be made as a threshold requirement for 4% tax credit applications submitted to the Department for developments proposed in 811 eligible MSAs. Our recommendation is for 10% of the total units in a qualified development.

§11.9(e)(2) Cost of Development per Square Foot

We support TAAHP's recommendation for this point category.

§10.302(d)(1)(A)(i) Market Rents

Recommend language change: For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI.

10.302(e)(7)(F) Developer Fee

Although we understand what the Department is trying to curtail with these new restrictions, we believe there needs to be more discussion with all stakeholders (developers, investors, lenders, etc.…) before a final determination is made. This change affects the overall deal as a whole and not just the developer pocket book.

HB 3311 Parity of Senior Housing

When reading the actual language in the statute and applying the formula according to the literary language, it appears clear that the statute is directed at the sub-regions. Since the At-Risk set aside does not differentiate between regions and sub-regions or rural and urban, it should be clear that the At-Risk set aside should not be included in the formula for the percentage of senior housing in Texas.

We appreciate the opportunity to participate in the discussion. If we can be of additional assistance, please let us know.

Sincerely,
Robbye G. Meyer

(30) Housing Lab by BETCO

October 8, 2015

Mr. Teresa Morales, Tax Credit and Bonds Administrator
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: 2016 Draft Qualified Allocation Plan (QAP) and Uniform Multifamily Rules

Dear Ms. Morales,

We appreciate the opportunity to provide comments to the draft 2016 QAP and Uniform Multifamily Rules. We appreciate all of staff's work on these rules and the various improvements made for the benefit of the program and its practitioners, including the ability to submit applications electronically, the reduction of local funding and equalizing scoring criteria for elderly and general population developments. With respect to certain items that we do not agree with, we offer the following comments for the Department's consideration. Please note that we have notated our changes in red font.

Qualified Allocation Plan (QAP) Comments:

§11.7 Tie Breakers
We would like to recommend a slight language change to the fourth tie break criteria to compare distances between the same target populations. This modification will assist with the on-going de-concentration efforts. We offer the following amended language to the current draft language:

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same target population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear mile will be performed by the closest boundaries.

§11.9(b)(2) Sponsor Characteristics
While we are not necessarily opposed to this new point category added to Sponsor Characteristics, it is unclear how an Applicant is to actually determine their current status. There are times where Department staff review time spills past the 90-day correction period deadline and will require more information from the Applicant/Developer. Will this be an instance that would impact the category status, even if the Applicant/Developer submitted their corrective action response prior to the conclusion of the corrective action period deadline? There are also times where

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an Applicant cannot correct the identified issue of non-compliance due to the unavailability of the resident or household member. Again, how will this impact the category status? We would like to request and recommend that Department staff set forth the process in which Applicants can determine their current category status. We further recommend that category status determined current as of the Application submission date of March 1, 2016, be applicable to the application throughout the review and evaluation process.

§11.9(c)(4) Opportunity Index

We would like to request that poverty rate for this scoring criterion is modified from 15% to 20% for both the Urban and Rural Areas. This modification will allow more census tracts in top two quartiles to become available and include communities that want and need the housing, but previously were not competitive. This adjustment will also further promote ongoing de-concentration efforts.

We also agree with other commenters that have advocated for more options for placing developments in areas of high opportunity that include second quartiles. These second quartile areas also offer high incomes; low poverty rates; and access to quality schools and often, these areas are located closer to public transportation and employment opportunities. We also agree with the current QAP language that provides opportunities in second quartiles; however, we do not agree that these second quartile areas should be a point less than first quartile areas with the added requirement of the elementary school having received at least one distinction. If this additional requirement is to be met for second quartile areas, then these areas should have the same point value as the first quartile areas. If this added requirement of the elementary school having at least on distinction was not part of the second quartile draft language, then it would qualify for a point less as the difference between seven (7) and six (6) points was the applicable quartile. We recommend a combination of language of (i) and (ii) under (A). We offer the following amended language to the current draft language:

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 20 percent for Individuals (or 35 percent for Developments in regions 11 and 13), an Applicant may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i)-(iv) of this subparagraph. The Department will base the poverty rate on data from the five (5) year American Community Survey.

(i) *The Development is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable. If the Development Site is located in the top quartile, is in the attendance zone of an elementary school that has a Met Standard rating, and has achieved a 77 or greater on index 1 of the performance index, related to school; or, if the*

Development is located in the second quartile, is in the attendance zone of an elementary school that has a Met Standard rating, achieved a 77 or greater on index 1, and has earned at least one distinction designation by TEA (7 points).

(ii) *The Development is located in a census tract with income in the second quartile of median household income for the county of MSA as applicable, and the Development Site is located in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (6 points)*

(iii) *The Development is located in a census tract with income in the top quartile of median household income for the county of MSA as applicable (5 points)*

(iv) *The Development is located in a census tract in the top two quartiles of median household income for the county or the MSA, as applicable (3 points)*

(B) For Developments located in the Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on the median income of the area and/or proximity to the essential community assets as reflected in clauses (i)-(vi) of this subparagraph if the Development Site is located within the census tract that has a poverty rate below 20 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

§11.9(c)(7) Tenant Populations with Special Housing Needs

We are unclear as to why the number of points in this point category changed when the path to receive points has not changed from the previous year. In the current draft, an Applicant can receive points by committing the prescribed number of 811 units to their existing units in 811 eligible areas or commit the prescribed number of 811 units in their proposed development. This was the same criterion that was in the 2015 QAP and the same number of points was available to Applicants regardless of point path. This year, there is an extra point given to the Applicants that have existing units for 811 eligible units. Perhaps there are pressing federal deadlines that are in jeopardy of not being met; hence, the extra point incentive. Whether this is the case or there is another reason to get the 811 units placed quickly, creating this unfair playing field is just bad policy all the way around. Therefore, we respectfully request the new paragraph (A) be stricken from the rule in its entirety, the current subpart (B) becomes (A) and current subpart (C) becomes (B).

Further, as an industry, we certainly wish to support the Department's efforts to advance the 811 program and understand that there could be issues such as looming federal deadlines and/or agencies that assist special needs populations needing available units for their clientele as quickly as possible that may have contributed to the push of this incentive, but there are other ways to accomplish this task. One such

option would be to utilize the exact 2015 QAP language for this point category, allowing the same points to be obtained by all Applicants regardless of which path is used for the points – commitment of existing units vs. commitment in proposed development units AND include the 4% Housing Tax Credit Program to this effort by adding a threshold item that requires commitment of prescribed number of 811 units in the proposed development or commitment of prescribed number of 811 units in existing developments. This way, both programs are participating simultaneously to further the Section 811 PRAC Program initiative. A tiered approach should be utilized in the 4% Housing Tax Credit Program based on the number of units in the existing development or proposed development. For example, developments with 100 or less units, must commit 10 Section 811 units; developments with 101-200 units, must commit 20 Section 811 units; developments with 201-300 or more units must commit 30 units Section 811 units. The requirements outlined in clauses (i)-(v) of the current subpart (B) would also be applicable to the 4% Housing Tax Credit Program Section 811 units.

Should this option to include the 4% Housing Tax Credit Program not be possible during the 2016 cycle, we strongly encourage the Department to consider including it in the 2017 4% Housing Tax Credit Program cycle to work with the 9% Housing Tax Credit cycle.

§11.9(c)(9) Proximity to Important Services

We agree with other commenters that a two-mile radius for a full service grocery store and pharmacy for the rural area will be very difficult to achieve, as many rural communities have these amenities ranging from three (3) to five (5) miles out from established neighborhoods and personal vehicles are needed to reach these amenities as there is no public transportation in rural communities. Therefore, we respectfully request the applicable radius for these amenities be expanded to three (3) miles and we offer the following language:

(9) Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one-mile radius (three-mile radius for Developments in a Rural Area) of the services listed below. These do not need to be separate facilities to qualify for the points.

<u>**Uniform Multifamily Rules Comments:**</u>

Subpart B – Site and Development Requirements and Restrictions

§10.101(a)(2) Mandatory Community Assets

In the 2016 draft rule, religious institutions were removed as a mandatory community asset. We respectfully request that this asset be added to the list of

Mandatory Community Assets, as these institutions play an essential role to the community on both an individual citizen level and overall community level.

Religious institutions, or churches, are a public service to the surrounding communities and provide just about everything. These institutions do not just provide support for the spiritual and emotional needs and health of its membership in the community, but also provide a myriad of supportive services to the community. Such services include day cares, meals on wheels, counseling, food pantries, immigration and free legal clinics, seminars on finances and health, which may include health fairs with free screenings for blood pressure and free flu shots, as well as emergency funds for items such as rent, utilities, medical expenses, or car repairs.

The church is about people, very much like our own industry. Its purpose is the betterment of the community and its citizens. When the church is rooted in its community and its membership is operating as public servants, the church has the ability to impact lives and the community in a very positive manner and should be considered a community asset that benefits low-income residents.

§10.101(a)(4)(B) Undesirable Neighborhood Characteristics

The current draft language found in clause (iv) of this subparagraph should be stricken in its entirety. This new language is very restrictive and would exclude large sections of communities in Urban Areas.

It is unclear as to how the Department will assess this item, if identified as an undesirable neighborhood characteristic, and what actions, documentation and timelines would be acceptable submissions by the Applicant to mitigate schools not having a Met Standard rating.

For example, if TEA and/or the school in question share what their plan of action is for bringing the rating of the school up to Met Standard and it will take five years to accomplish most of the outlined actions in the plan, will this timeframe be acceptable to resolve the issue? Or does the mitigation plan have to resolve all issues by Placed In Service date?

Due to the potential redlining of Urban Areas and the unpredictability of possible remediation, we respectfully request that this language be stricken entirely, and clause (v) becomes clause (iv).

§10.101(a)(5) Common Amenities

We also would like to recommend that language in subparagraph (B) be modified to reflect "Compliance Period" and not "Extended Use Period". With more and more development coming on line every year, monitoring staff will be required to expend

more resources to not only monitor what is federally required during the compliance period, but the added burden of monitoring these amenities throughout the Extended Use Period as well. This is both unnecessarily restrictive and cumbersome for both Department staff and the Property Owner. We offer the following language:

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period.

We wish to express our appreciation for considering our comments. If you have any questions, please do not hesitate to contact me any time directly at the number or email listed below.

Respectfully,

Lora Myrick

Lora Myrick
Principal

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October 15, 2015

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: Draft 2016 Qualified Allocation Plan and Multifamily Rule Comments

Dear Mr. Irvine,

Thank you to you and your staff for your continued efforts to dialogue with the stakeholders related to the staff drafts of the 2016 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). Please accept the following comments on behalf of Marque Real Estate Consultants (MREC). Comments 1, 3, 5-8, 10, 13, 15, 16, and 18 mirror comments made by the group TX-CAD and comments 2, 3, 8, 10-17 mirror comments made by TAAHP.

1. **QAP, §11.7(3) Tie Breaker Factors**
   MREC suggests a change to the third tie breaker in order to add clarity to how the tie breakers will be applied across deal types. As written, it is unclear how a tie between multiple applications representing general population and elderly developments would be treated under §11.7(3). Therefore, we suggest that the third tie breaker apply to all developments, not only general population developments. Suggested language:

   (3) ~~For competing Applications for Developments that will serve the general population, t~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

2. **QAP, §11.7(4) Tie Breaker Factors**
   Additionally, MREC suggests a revision to the fourth tie breaker to evaluate the distance of proposed developments to the nearest existing tax credit development serving the same population type. Suggested language:

   (4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

3. **QAP, §11.9(c)(4) Opportunity Index**
Currently an index 1 score of 77 is being used as the standard for elementary schools to meet the definition of a high opportunity area. In previous years this was the statewide median for both elementary schools and all schools combined. This year, the elementary school median index 1 score has dropped to 76. We believe that because this scoring item is directly tied to elementary schools, that the statewide median elementary school index 1 score of 76 should be used. Suggested language:

(A) For Developments located in an Urban Area…
(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (7 points);
(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);
(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (5 points);
(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement.

4. **QAP, §11.9(c)(5) Educational Excellence**
As stated above related to Opportunity Index, data released by the Texas Education Agency (TEA) in 2015 shows that the statewide elementary school index 1 score has decreased to 76. We think it is appropriate to use an index 1 score of 76 for Opportunity Index. Additionally, MREC thinks it is most logical to have a single index 1 score for elementary schools across scoring criteria, which is why we are suggesting that the change in elementary school index 1 score flow through to Educational Excellence. We are not suggesting a change to the index 1 score used for middle or high schools. Suggested language:

(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the

middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

5. **QAP, §11.9(c)(6)(C) Underserved Area (Never received an allocation)**
In an effort to ensure that communities have the opportunity to have a broad range of populations served, we believe that this scoring item should only take into account developments of the same type. Proposed language change below:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

6. **QAP, §11.9(c)(6)(F) Underserved Area (Employment Growth)**
While we support the concept, we cannot support the language as written. Any proof associated with this item needs to be completely objective and available to the public at large therefore we recommend removing this scoring criteria.

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point);~~

7. **QAP, §11.9(c)(6)(G) Underserved Area (Population Growth)**
Accurate demographic information related to the growth at the census tract level does not exist. We believe that growth at the Place level is a more appropriate indication of growth of a community as a whole. Proposed language change below:

(G) A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years. ~~provided the census tract does not comprise more than 50% of the county.~~ .

8. **QAP, §11.9(c)(7)(A) Tenant Populations with Special Needs**
A new category within this scoring item provides the highest level of points to those Applicants who commit units to the 811 program within an existing property. While we understand that TDHCA is seeking to place 811 units quickly, the result of this new scoring category is to give a competitive advantage within the current application round based on a factor unrelated to the development being proposed within the current application. We believe this new item will have the effect of discriminating against developers solely on the basis of the siting of previous developments – those who have specialized in rural, senior, or smaller MSAs would not be eligible for these points. It gives an advantage to certain developers, not for merit, but luck of the draw for having built previously in specific urban areas.

The Department can instead offer incentives outside of the application cycle to encourage participation in the 811 program for existing portfolios. Because of this we recommend deletion of the language in its entirety:

~~(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

9. **QAP, §11.9(d)(7)(A) Concerted Revitalization Plan**

We have concerns about the subjectivity of language in the rule and feel that more specificity of what is required and will be approved would be helpful. Additionally, in order to support the revitalization efforts of larger cities we are suggesting that a city be allowed to designate more than one development as significantly contributing to revitalization. We suggest the following changes:

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an ~~distinct~~ area that ~~was once vital and has lapsed into a situation requiring~~ has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~ adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan ~~that~~ should meet~~s~~ the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been ~~in~~dentified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of ~~violent~~ crime~~, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances~~ or overt illegal activities; and/or

(-c) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.

(III) Staff will review the ~~target area for presence of the problems identified in the~~ plan ~~and~~ for targeted efforts within the plan to address ~~those~~ the problems identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;
(-b-) developing health care facilities;
(-c-) providing public transportation;
(-d-) developing significant recreational facilities; and/or
(-e-) improving under-performing schools.
However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have~~ identify sufficient and~~,~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission. ~~been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official ~~providing documentation of measurable improvements within the~~ certifying the identified revitalization area, that the development is located within the revitalization area, and that the plan meets the requirements of subsections I, II and IV of this section; ~~based on the target efforts outline in the plan;~~ and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing ~~most~~ significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may ~~only~~ identify no more than three ~~one single~~ Developments during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at preapplication). If multiple Applications submit resolutions under this subclause from the same Governing Body, then not more than three ~~none~~ of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing ~~most~~ significantly to concerted revitalization efforts.

10. **QAP, §11.9(e)(2) Cost of Development Per Foot**
Construction costs have increased significantly over the last three years and we request that the cost per foot figures be increased by $10 per square foot to reflect these increases.

11. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iii) Undesirable Neighborhood Characteristics**
The additional criteria to evaluate blight is too subjective to administer in a consistent way. Additionally, this criteria may result in the ineligibility of sites in high opportunity areas or revitalization areas that are rapidly improving simply due to the presence of a de minimis number of blighted structures. Therefore we recommend the deletion of this language in its entirety:

~~(iii) The Development Site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.~~

12. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iv) Undesirable Neighborhood Characteristics**
Certain school districts in the larger urban areas will struggle to meet the new TEA threshold standards, because they are indeed new standards. As a result, this section will redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff. Therefore we suggest a deletion of this language in its entirety:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

13. **Multifamily Rules, Subchapter B, §10.101(b)(4) Mandatory Development Amenities**
We request that central air not be required for acquisition/rehabilitation properties where the units currently operate with PTACs. Modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and reasonable ceiling height. Suggested language change:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation); and

14. **Multifamily Rules, Subchapter B, §10.101(b)(5) Common Amenities, §10.101(b)(6)(B) Unit and Development Features, and §10.101(b)(7) Tenant Supportive Services**
    Proposed 2016 language requires program participants' obligations past the compliance period. This is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff. Therefore, we request that the timeframe under each of these sections be restored to the compliance period rather than the extended use period.

15. **Multifamily Rules, Subchapter D, §10.302(d)(1)(A)(i) Market Rents**
    We recommend a deletion of the new language which limits underwritten market rents to the 60% AMI Net Program Rent. This new policy is a one size fits all approach to a problem observed by the REA Division in a limited scope, and this type of uniform limitation does not appropriately evaluate developments across the state. Therefore, we suggest that TDHCA rely upon the market study it requires applicants to have prepared. Suggested language is as follows:

    (i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. ~~For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.~~

16. **Multifamily Rules, Subchapter D, §10.302(e)(7)(F) Developer Fee**
    We respectfully disagree with the concept of fixing developer fee at a specific amount at the time of Application. With increased cost, comes increased risk, increased guarantees, and reduced margins. The developer fee is the deal's contingency and limiting this buffer only serves to make a deal weaker financially. Because applications are submitted almost a year in advance to breaking ground, it makes little sense to penalize the developer for market forces that they cannot control. Furthermore, given the limited time frame from publication of rules to submission of an application it is not feasible or reasonable to expect a developer to fully understand all of the potential challenges, issues, and difficulties a deal may encounter during its life cycle. The IRS and TDHCA rules set out what is a proper incentive for developers to produce affordable housing and we do not believe it is in the best interest of the program to artificially limit the fee at the time of application. Because of this we recommend deletion of the language below in its entirety:

    ~~(F) The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

17. **Multifamily Rules, Subchapter E, §10.402(j)(3)(B)(xxiv)**
    We requests that this revert to 2015 requirement for a 15 year pro forma instead of proposed 30 year pro forma for consistency with the application requirements, and past TDHCA policy at cost certification.

18. **Multifamily Rules, Subchapter E, §10.405(4)(H) Amendments and Extensions**
    Language was added to the rules that would require an Applicant to get an amendment if there are significant increases in development costs or changes in financing.

    We oppose the language for three reasons: 1) With no precise definition of "significant" an Applicant would have no way to determine if an amendment is required; 2) Development is a fluid process and changes in the market, code interpretations, and site development issues can all cause increases at any time before or after closing. Having to get an amendment prior to closing will serve to delay closings and put the deal in greater jeopardy. Having to go back for an amendment after closing for something that cannot be addressed, changed, or fixed by the Department adds additional paperwork and effort that serves no meaningful purpose; 3) The Developer, Lender, and Syndicator are responsible for determining the feasibility of a deal after award. Together they take the best information available and make the decision to proceed or not. Post construction, the lender and/or syndicator enforce review and approvals of all changes either of a single dollar amount or a cumulative dollar amount thereby providing sufficient oversight to the cost of the development. Since tax credits are capped upon award, there is not risk to the department for these additional costs or financing changes. Because of this we recommend deletion of the language below in its entirety:

    ~~(H) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required;~~

We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2016 Qualified Allocation Plan and Multifamily Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker
Marque Real Estate Consultants

Cc: Tom Gouris, TDHCA
Marni Holloway, TDHCA
Teresa Morales, TDHCA

(32) Texas Appleseed/Texas Low Income Housing Information Service

From: Maddie Sloan
To: Teresa.Morales   tdhca.state.tx.us
Subject: Comments on the Uniform Multifamily Rules
Date: Thursday, October 15, 2015 2:53:54 PM

Dear Ms. Morales:

Texas Appleseed's comments below are focused on provisions that ensure applications in High Opportunity and genuinely revitalizing areas are rewarded in order to offset the historical concentration of Low Income Housing Tax Credit (LIHTC), and other assisted housing affordable to low-income Texans, in distressed areas that has negative effects on both the families that live in these units and the neighborhoods in which they are concentrated. We are particularly concerned with proximity to hazardous land uses.

Subchapter A – General Information and Definitions

§10.3(a)(108) Reconstruction

We encourage the Department to include reconstruction of an equal number of units on a new site as a potential reconstruction project, just as it has in the At-Risk set-aside in the Qualified Allocation Plan (QAP). Cite Developments that would not qualify under the current Undesirable Site Features (§10.101(a)(3)) and Undesirable Neighborhood Characteristics (§10.101(a)(4))

Subchapter B – Site and Development Requirements and Restrictions

§10.101(a)(3) Undesirable Site Features

The distances between Development sites and undesirable land uses in §10.101(a)(3)(A,)(C), and (E) are inadequate to protect tenants from harm. The potential harm to tenants from a junkyard or solid waste or sanitary landfill, including potential groundwater and soil contamination by heavy metals and toxins, is far greater than the potential harm from a sexually-oriented business, but both these types of undesirable site uses only need to be 300 feet from a Development site.

The requirement that Development sites need to be located only 500 feet from a heavy industrial or dangerous use – including manufacturing or fuel storage – is also unacceptably small. A fuel tank explosion, for example, would impact an area much larger than the area within a 500 foot radius. Manufacturing plants can release toxic compounds, particulates, and gases, and truck traffic going to or from a manufacturing plan also contribute to hazardous emissions and dust. Airborne emissions, in particular, will spread beyond a 500 foot radius. Residents who live in the area surrounding the concrete crushing plant, including those who lived more than 500 feet from the site, in Beaumont, Texas, for example, reported having to wash their windshields every morning because the dust produced by the plant is so thick. Other industrial uses permitted in a heavy industrial zone include chemical, petroleum, and asbestos manufacturing.

We are particularly concerned about the reduction in distance between a Development site and active railroad tracks to 100 feet. Even a commuter train derailment has the potential to cause damage well beyond 100 feet. Trains that are carrying hazardous materials present an even greater risk. The increasing use of rail to transport crude oil presents an extraordinary safety risk. In addition to the potential of trains carrying crude to become "firebombs on rails", there is a risk of oil spills: 68% of Texas crude-by-rail spills in the last 10 years have happened since 2012. (Aman Batheja, "Rail Transport of Crude Oil Increases as Pipeline Falls Short," *Texas Tribune,* 13 April 2014; Texas Department of Transportation, Texas Railroad Management Information System, accessed 05 December 2014 at http://www.txdot.gov/inside-txdot/division/rail/trims.html/.)

§10.101(a)(4) Undesirable Neighborhood Features

We strongly agree that any evidence of mitigation of undesirable neighborhood characteristics "must also include timelines that evidence that efforts are already underway and a reasonable expectation that the issue(s) being addressed will be resolved or significantly improved by the time the proposed Development is placed in service."

Thank you for the opportunity to comment on the proposed Rules.

Madison Sloan

Madison Sloan

Director, Disaster Recovery and Fair Housing Project

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October 14, 2015

By Email: Teresa.Morales@tdhca.state.tx.us

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
Attn: Teresa Morales

RE: Comments on Draft 2016 Uniform Multifamily Rules and Qualified Allocation Plan.

Dear Teresa:

Please accept these comments to the Draft 2016 Uniform Multifamily Rules and Qualified Allocation Plan:

RULES:

1. **Section 10.03(a)** – We request that a definition be provided for "placed in service" that is the definition used in connection with Section 42 of the Internal Revenue Code. At this time, the term is used in the Rules, but is not defined.

2. **Section 10.03(a)(47)(B)** – The current definition of "Elderly Preference Development" appears to extend to any housing that has HUD or certain other Federal funding, regardless of whether the developer's intent is to give a preference to the elderly. Is this a correct interpretation? If not, we request that the language be appropriately modified.

3. **Section 10.101(a)(4)(B)(ii)** – We recommend that the language return to that used in 2015. Neighborhoodscout.com has been shown to be a questionable measure of neighborhood crime. In 2015 there were at least alternatives that could be used to counter neighborhoodscout.com scoring.

4. **Section 10.101(a)(4)(B)(iii)** - We support the TAAHP recommendation that the presence of "blight" be deleted as an Undesirable Neighborhood Characteristic, due to the subjectivity of its identification. Revitalization of a neighborhood frequently progresses from the fringes of an

older area toward its center, and it is hard to assist in the revitalization of an area if a developer is limited to sites only in the redeveloped portion of that neighborhood.

5. **Section 10.101(a)(4)(B)(iv)** – We support the TAAHP recommendation to delete this provision concerning schools. The determination of whether there exists an Undesirable Neighborhood Characteristic is simply too complicated in this provision.

6. **Section 10.101(a)(4)(E)(iii)** – We recommend revising "is necessary to enable" to read "enables", so that there is no implication that Fair Housing goals may only be achieved with the project in question.

7. **Section 10.302(e)(7)(A)** – We support the Staff's revision permitting public housing authority developments converting under the HUD Rental Assistance Demonstration ("RAD") Program and financed using tax-exempt mortgage revenue bonds to have a developer fee not to exceed 20% of eligible cost less developer fee.

8. **Section 10.302(e)(7)(C)(ii)** – We recommend deletion of this subsection denying developer fee attributable to acquisition credits in an identity of interest acquisition. A third party appraisal is required in identity of interest transactions, so there is an arm's length determination of the value of the improvements to support any claim made for tax credits. The fact that the development was acquired from a related party should be overcome by the evidence of the appraisal, and the relationship between seller and buyer rarely serves to significantly reduce the complexities of the development process. In the alternative, we recommend that transactions in which housing authorities sponsor rehabilitation of existing developments be an exception to this provision. Where a housing authority redevelops existing public housing, the time-consuming element of dealing with HUD to obtain consents necessary for the rehabilitation and financing are a significant factor, and the developer should be compensated for that effort.

QAP:

9. **Section 11.9(b)(2)(B)** – We recommend delaying implementing this provision relating to Previous Participation Compliance History until the 2017 Round, at which point developers will know what categories they fall into and will assess their application potentials accordingly.

10. **Section 11.9(c)(6)(F)** – We recommend deleting this new provision on the grounds that it will be exceedingly difficult to substantiate that there is a workforce employing 50 or more persons at or above the average median income for the population in which the Development is located.

11. **Section 11.9(c)(6)(G)** – We recommend deleting this new provision on the grounds that it will be exceedingly difficult to substantiate, unless the Department includes this information in the 2016 HTC Site Demographic Characteristics Report.

12. **Section 11.9(d)(2)** – This subsection for Commitment of Development Funding by Local Political Subdivision should contain the following language, as is already provided in Sections

11.9(d)(1); (d)(4); (d)(5); and (d)(6): "Once a resolution is submitted to the Department it may not be changed or withdrawn."

13. **Section 11.9(d)(7)** – We support the TAAHP recommendation to return to the 2015 language for Community Revitalization Plans.

14. **Section 11.10** – We recommend that Third Party Requests for Administrative Deficiency for Competitive HTC Applications be limited to one submission per Application by any single third party Requestor. Even if this limitation is implemented, we envision the Department being hit with multiple requests from related persons, each of whom would qualify as a "third party." This potential may substantially hinder the evaluative process if a June 1st deadline is used, so an earlier deadline is recommended.

Thank you for the opportunity to provide our comments on the draft Rules and QAP. If you have any questions concerning our suggestions, please do not hesitate to call.

Very truly yours,

Barry J. Palmer TMB

Barry J. Palmer

(36) Texas Coalition of Affordable Developers

TX-CAD 2016 Multifamily Rules Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2016 Multifamily Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

Section 10.101(a)(4) Mandatory Development Amenities

We request that central air not be required for acquisition/rehabilitation properties where the units currently operate with PTACs. Modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and reasonable ceiling height.

Proposed language change:

L. All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units *and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation)*

(37) Terri Anderson

From:	TERRI ANDERSON
To:	Teresa Morales; Brent Stewart; Tom Gouris; Raquel Morales; Tim Irvine; Marni Holloway
Subject:	Comments to TDHCA Proposed 2016 Rules
Date:	Thursday, October 15, 2015 4:49:46 PM

Good evening,

Please see the comments below to the proposed 2016 Multifamily Rules":

1. Section 10.302(d)Operating Feasibility

(A) Rental Income

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI in rural markets. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study.

1. 10.201(2)(B)(iii) – shorter closing expectations for Traditional Carryforward Tax-Exempt bonds [TDHCA should not require tighter time frames, and be more development friendly understanding it is very difficult to close bond deals in five (5) months] Suggestion: Remove language.
2. 10.204(11) – Annexation of a Development Site occurring while an Application is under review to require evidence of appropriate zoning with the Commitment or Determination Notice or provide evidence of vested rights prior to construction commencement. [Involuntary Annexation is a key indicator of Housing Discrimination and to the extent a City wants to prevent the development of affordable housing, they will use this tool to prevent the award. Vested rights and other legal vehicles are available to the Developer and do not require proper zoning.]
3. 10.302(d)(4)(D)(iv) Debt Service Coverage – The Underwriter may limit total debt service that is senior to a Direct Loan where Direct Loans are the only subsidy in the proposed uses.
4. 10.204(14)(C) – Requiring an attorney statement (essentially an opinion) supporting the amount and basis for qualifications and reasonableness of achieving property tax exemption or provide a predetermination notice from the applicable appraisal district. [The Department should recognize State Law and not require a non-profit an additional

$5-$10,000 cost burden for an opinion on a proposed development]

Thank you for the opportunity to provide public comment.

Sincerely,

Terri L. Anderson, President
Anderson Development & Construction, LLC
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Coppell, TX 75019
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(38) National Housing Trust

October 15, 2015

Ms. Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: Texas Draft 2016 Qualified Allocation Plan

Dear Ms. Holloway:

The National Housing Trust (NHT) is a national nonprofit organization formed to preserve and revitalize affordable homes to better the quality of life for the families and elderly who live there. The Trust engages in housing preservation through real estate development, lending and public policy. Over the past decade, NHT and our affiliate, NHT-Enterprise Preservation Corporation, have preserved more than 25,000 affordable apartments in all types of communities, leveraging more than $1 billion in financing.

The Trust fully acknowledges the entire set of preservation policies and programs established by the Texas Department of Housing and Community Affairs (TDHCA), and the comments below refer specifically to TDHCA's draft Qualified Allocation Plan (QAP) as it relates to the Low Income Housing Tax Credit (Housing Credit) program. We appreciate the opportunity to comment on Texas' draft 2016 QAP. The Trust would like to commend you on several aspects of your draft QAP:

- **Set-aside of 15% for "at risk" developments and prioritization of proposals involving preservation and rehabilitation of existing multifamily rental housing;**
- **Exemptions for preservation projects from de-concentration requirements;**
- **Green building threshold points including third-party green standards such as Enterprise Green Communities.**

The Trust would also like to offer comments on areas that we believe will help TDHCA maintain a strong record of preserving at-risk housing units in Texas.

Balancing Incentives in Areas of Opportunity and Preservation. Some states are setting priorities for the deployment of Housing Credits in previously underserved areas. The Trust supports a **balanced approach** which calls upon states to ensure that such deployment does not inadvertently disadvantage the allocation of Housing Credits for the preservation of affordable housing, wherever such housing is located.

Indeed, as observed in HUD's Final Affirmatively Furthering Fair Housing (AFFH) Rule: "A program participant's strategies and actions…may include various activities…including…Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation."

TDHCA's draft 2016 QAP takes important steps towards achieving this balance, offering incentives for community targeting either in areas of opportunity, as defined through a matrix of indicators, or in areas with ongoing community revitalization efforts. However, a balanced approach of investing in all communities may often mean preserving at-risk housing even in areas that do not have a formal community revitalization plan. The preservation of affordable housing can itself be an important generator of investment within a distressed community.

By balancing these incentives, TDHCA can continue to support the preservation of affordable multifamily housing, wherever such housing is located. Indeed, incentivizing the preservation of housing in all areas will allow TDHCA to promote housing choice by:

- Catalyzing investment and development in distressed neighborhoods serving racial minorities;
- Improving living conditions and enabling households who choose to stay in their neighborhoods to do so;
- Maintaining and improving housing in gentrifying communities.

The Trust urges TDHCA to balance point incentives for investing in high opportunity areas and the preservation and rehabilitation of existing multifamily housing in a way that makes sense for Texas.

The Trust also encourages TDHCA to partner with Texas' utilities to make energy-efficiency programs more accessible to affordable, multifamily developments. A majority of states implement utility-funded energy efficiency programs, often paid for through charges included in customer utility rates. These programs are a significant and growing source of resources for residential energy retrofits that remain largely untapped by the multifamily sector. Utility energy efficiency program budgets have significantly increased since 2006 and could reach **$12 billion** nationwide by 2020. Reaching under-served markets, such as affordable multifamily housing, will be necessary if utilities are to achieve higher spending and energy saving goals. In several states, utilities are partnering with state housing agencies and affordable housing owners to develop successful multi-family energy efficiency retrofit programs for multifamily properties. **Energy efficiency upgrades in affordable rental housing are a cost-effective approach to lower operating expenses, maintain affordability for low-income households, reduce carbon emissions, and create healthier, more comfortable living environments for low-income families.**

Conclusion

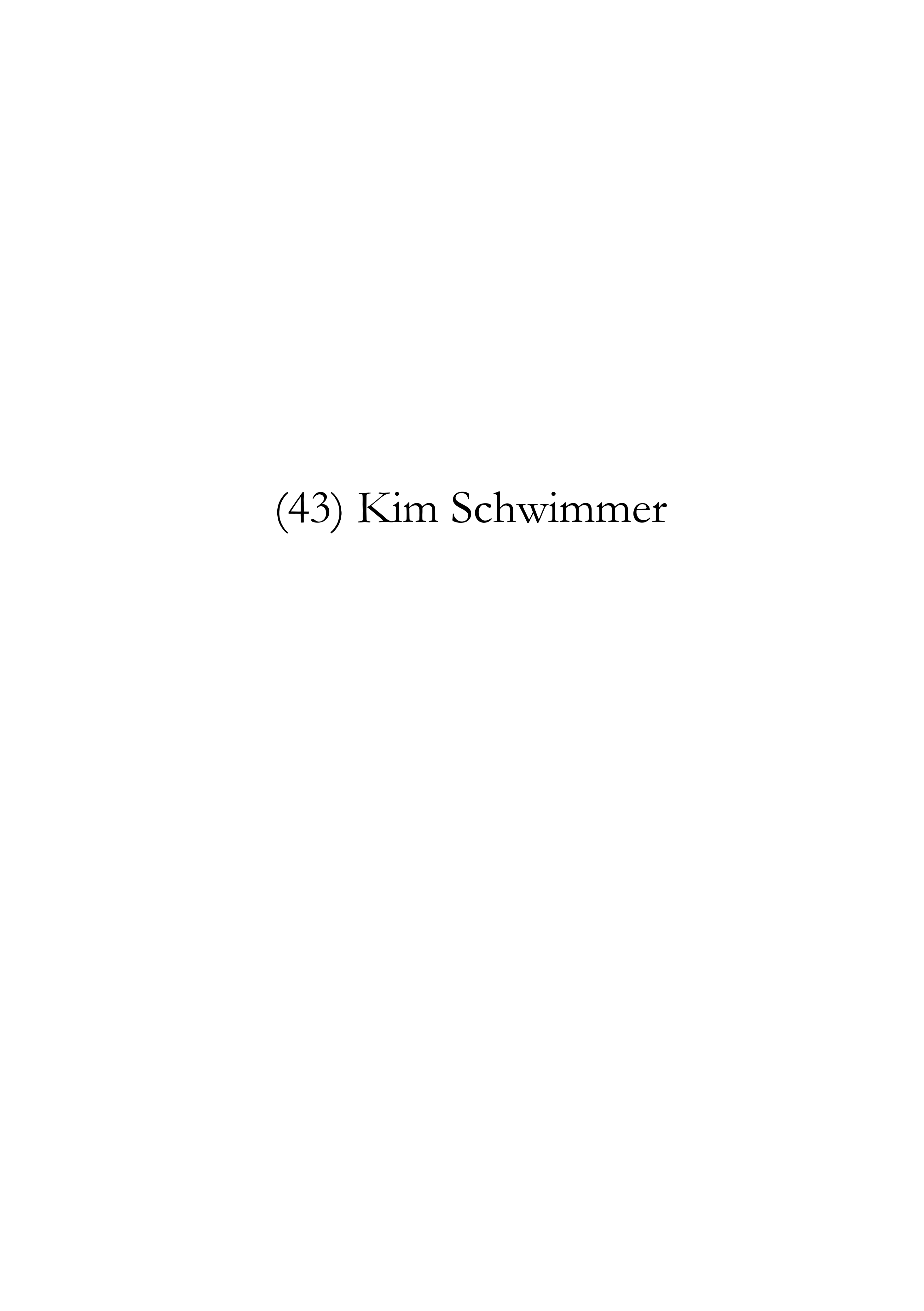
As you consider these recommendations, you can explore how other states are approaching each of these issues in their Qualified Allocation Plans by searching PrezCat (www.prezcat.org), an online catalog of state and local affordable housing preservation policies. We would be happy to work with you to flesh out some of these ideas, and identify options that work best for the preservation of affordable housing in Texas.

It is important for housing choice that TDHCA maintains a balanced allocation of Housing Credits. In addition to helping to build sustainable communities, preservation is significantly more cost-efficient and environmentally friendly than new construction. The National Housing Trust urges the Texas Department of Housing and Community Affairs to continue its support for sustainable communities and the preservation of Texas' existing affordable housing by maintaining the set-aside for "at-risk" properties and balancing incentives for opportunity areas and preservation in the final 2016 QAP.

Thank you for the opportunity to comment on this important issue in the State of Texas.

Sincerely,

Michael Bodaken
President



(43) Kim Schwimmer

From: Kim Schwimmer
To: teresa.morales _tdhca.state.tx.us
Subject: HTC Program Scoring Criteria for 2016
Date: Thursday, October 15, 2015 9:15:20 AM

Ms. Morales:

As a Texas land broker currently working with several developers who are participating in the Competitive Multifamily 9% HTC program and the PAB bond/4% HTC program, I am actively seeking sites for the development of affordable multifamily housing in Texas. I cover a wide area, but focus primarily on Region 3 Urban.

It is my professional opinion that the radius of 1 mile for proximity to a full service grocery and pharmacy (1 point each) needs to be expanded for the 2016 QAP/Multifamily Rules. I am recommending that the radius be expanded to 1.5 miles. I understand that the recommendation has been made to extend the radius for 3 miles in Rural areas. I feel that Urban areas pose far more challenges to find available and affordable MF tracts that are close to major retail outlets such as a Walmart, HEB Plus or other sources of full service grocery and pharmacy outlets. Land costs have escalated in proximity to those types of retail centers, and suitable tracts of land are typically not zoned for MF use, may not be large enough to support a development and usually require lengthy and costly rezoning close to neighboring subdivisions where opposition to affordable MF is gaining momentum and can kill a project. The 1 mile radius does not allow for access by most projects located in master planned communities to these services and often, these areas provide the best opportunities to locate affordable MF housing in a growing, Urban community.

I am requesting that TDHCA extend the radius of proximity to grocery and pharmacy services to 1.5 miles, to address these issues for Urban projects, just as it is considering extending the radius to 3 miles for Rural projects.

I am also requesting that churches remain in the list of mandatory Community Assets as they play a significant role in the social, economic and spiritual well-being of residents.

Thank you for your consideration. Please see my suggested changes below.

Qualified Allocation Plan Proposed Changes:

Section 11.9 (c)(9) Competitive HTC Selection Criteria/Proximity to Important Services

I request the following substitution to this section:

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius for Urban Developments and (three (3) mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.

(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

This is a substitution for the following text:

Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one mile radius (two mile radius for Developments in a Rural Area of the services listed below. These do not need to be in separate facilities to qualify for the points.

(A) Full Service Grocery (1 point);
(B) Pharmacy (1 point).

Subchapter B-Section 10.101 (a)(2)(c) Mandatory Community Assets
I request that the church be reinstated as a Mandatory Community Asset.

Thank you,

Sincerely,

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Kim Schwimmer
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(45) Pedcor Investments

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin Texas 78701

Re: Comment on the 2016 Staff Draft of the Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules ("Rules")

Dear Mr. Irvine,

As experienced developers and owners of tax credit properties across the country and more recently in Texas, Pedcor Investments would like to submit comment on the Texas Department of Housing and Community Affairs ("Department") staff draft of the 2016 QAP and Rules. We would first like to thank you and your staff for the tremendous amount of work that has gone into this process. Although they may seem lengthy, these comments are made in the spirit of offering ideas to improve the QAP and Rules and not in any way as a criticism of staff's efforts. We appreciate your consideration of the following, which are listed in the order in which they appear in the Rules and QAP.

Section 10.101(a)(2), related to Mandatory Community Services and Other Assets

Staff's initial draft included a requirement that all proposed New Construction developments be located within three miles of a full service grocery store, pharmacy, and urgent care facility. While we agree with the removal of this provision as a threshold item, we do think it is appropriate to single out certain amenities as being more important to the tenants of the proposed developments than others. We agree that proximity to a grocery store is essential to everyone on an almost daily basis, while proximity to a county courthouse should perhaps not carry the same weight with respect to determining eligibility. However, we do not agree with the concept of making proximity to these assets a scoring item (and will provide similar comment under that particular item). While this is not meant to be commentary on whether or not the Department is subject to the Remedial Plan, we would point out that the Remedial Plan does call for staff to remove all "development location incentive criteria" (outside of the Opportunity Index, Educational Excellence, and those otherwise mandated by statute or federal law) from the QAP. We believe adding this location specific incentive could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index. However, in order to incorporate the importance of proximity to certain assets over others, we propose the following:

(2) **Mandatory Community Assets.**

(A) Development Sites must be located within an appropriate distance of community assets as described in subparagraph (B) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) – (iii) of this subparagraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active

construction, post pad (e.g. framing the structure) by the date the Application is submitted.

(i) New Construction in an Urban Area must qualify for eight (8) points
(ii) New Construction in a Rural Area must qualify for six (6) points
(iii) Rehabilitation Development (in either Urban or Rural areas) must qualify for five (5) points

(B) The community assets and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population or in an Urban or Rural Area.

(i) within one mile of full service grocery store (3 points);
(ii) within two miles of a full service grocery store (2 points);
(iii) for Applications proposing to serve the General Population, within three miles of a full service grocery store (1 point);
(iv) within one mile of a pharmacy (3 points);
(v) within two miles of a pharmacy (2 points);
(vi) within three miles of a pharmacy (1 point);
(vii) within one mile of an urgent care facility (3 points);
(viii) within two miles of an urgent care facility (2 points);
(ix) within three miles of an urgent care facility (1 point);
(x) for Applications in a Rural Area, within two miles of a public school (1 point);
(xi) for Applications proposing to serve the General Population, within ½ mile of a public school (2 points);
(xii) within one mile of a public school (1 point);
(xiii) for Applications proposing to be an Elderly Development, within one mile of a senior center accessible to the general public (2 points);
(xiv) within ½ mile of a designated public transportation stop at which public transportation (not including "on demand" transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation does not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify (1 point);
(xv) For Applications in an Urban Area, within one mile, and for Applications in a Rural Area, within two miles of any of the community assets listed in subclauses (I) – (XIV) of this clause (1 point):

(I) convenience store/mini-market;
(II) department or retail merchandise store;
(III) bank/credit union;
(IV) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);
(V) indoor public recreation facilities, such as, community centers and libraries accessible to the general public;
(VI) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;
(VII) medical office (physician, dentistry, optometry) or hospital/medical clinic;
(VIII) religious institutions;
(IX) community, civic or service organizations, such as Kiwanis or Rotary Club;
(X) post office;
(XI) city hall;

(XII) county courthouse;
(XIII) fire station; or
(XIV) police station

Section 10.101(a)(5)(B), related to Common Amenities

The 2016 draft states that, "In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase." We believe that if tenants in a second phase of a development are able to enjoy the benefits of an amenity that has been built in the first phase that the amenity should count for points in the second phase. If the reason behind the rule is a concern over eligible basis, we believe that issue can be resolved at cost certification. We understand this rule to be in place to ensure that amenities are provided for the tenants' use, regardless of when that amenity was built. Further, we believe that building an additional amenity in some cases is an inefficient use of federal resources. We propose the following:

"...Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development ~~cannot~~ can be claimed for purposes of meeting this requirement for the second phase, as long as that the amenity still meets any requirements with respect to its size or, where appropriate, the number of amenities required per unit. ~~The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development.~~ All amenities must be accessible and must be available to all units via an accessible route."

Section 10.204(14), related to Required Documentation for Application Submission

We propose that this section of the rule be removed. While we believe it is appropriate for Applicants to provide evidence that a property tax exemption can be reasonably expected, attorneys may be reluctant to make the statement required by the proposed rule. While the law regarding property tax exemptions might be very clear, attorneys' hesitancy with respect to providing these letters is understandable since, in a very practical sense, it is the appraisal districts with the ultimate authority. In addition, this only adds cost to the application process. If this provision is ultimately included in the rule we suggest that it be moved to Subchapter D as an item that may be requested by the Real Estate Analysis Division, so that this cost is only borne if the Application is underwritten. Alternatively, we suggest it be included only as a condition of Commitment.

Section 10.205(5), related to Site Design and Feasibility Report

We do not suggest any changes to this section, only that staff consider moving it to §10.204 of the Rules so that it is not subject to the same scrutiny as other Third Party Reports, particularly with respect to their being required to be submitted "in their entirety" or have the corresponding Application be terminated. Unlike the Market Analysis, Environmental Site Assessment, and other Third Party Reports which are truly commissioned to be completed entirely by third party professionals, this report can actually be compiled by the Applicant from more than one service provider. In addition, some aspects of this report

may very well be included in other parts of the Application. We believe that this report should be subject to the provisions included in §10.201(7), related to the Administrative Deficiency Process (including the provision of the rule regarding "matters of a material nature not susceptible to being resolved") instead of the provision included in the introductory paragraph for Third Party Reports.

Section 10.207(b), related to Waiver of Rules for Applications

We believe this rule is unclear with respect to the authority of the Executive Director to grant any waivers. The rule indicates that the Executive Director may waive requirements "as provided in this rule," which we understand has been interpreted to mean that, unless a section of the rule actually speaks to a waiver of that particular rule, that the Executive Director does not have the authority to entertain a waiver of that rule. While we contend that the Executive Director could have such authority, we do not necessarily disagree with that interpretation of the current language. However, the only place in the rule that specifically mentions such authority to grant a waiver is in the introductory paragraph to the fee section, §10.901 of the Rules. Section 11.6(5), related to Credits Returned Resulting from Force Majeure Events, specifically states that waivers will not be accepted, but that is the only other place in the QAP or Rules that waivers are mentioned. Because this section (§10.207) alludes to a process by which an Applicant could appeal the denial of a waiver request by the Executive Director, it implies that such waiver requests would actually be entertained. If waiver requests will not be entertained by the Executive Director, we suggest removing the provision so as to speed up the process by which waiver request would actually be presented to the Board. However, if the Executive Director will entertain the requests, we suggest the following:

"...The Executive Director may consider requests to waive requirements of those provisions of this rule listed in subsection (a) of this section.~~ as provided in this rule~~. Even if this section of the rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action..."

Section 11.3(e), related to Additional Phase

We previously submitted comment with respect to this rule in a letter dated August 17, 2015, which was included as backup documentation to the initial staff draft presented to the Board on September 3, 2015. In addition, we made an oral presentation at the September 11, 2015 Board meeting regarding this matter. We stand by our previous comment and hold that this provision of the rule unnecessarily delays putting affordable units on the ground at otherwise eligible sites. We contend that any evaluation of a proposed site is going to somehow include adjacent sites – as well as those that are 500 or 5,000 feet away. For example, those (possibly adjacent) sites will be factors when evaluating other statutorily mandated de-concentration factors, undesirable neighborhood characteristics, and feasibility with respect to demand. While we previously suggested alternate language in order to address what we thought may be concerns of staff, our preference is that the section be deleted in its entirety.

Section 11.4(b), related to Maximum Request Limit

We believe that clarification is needed regarding request limits for Elderly Developments located in sub-regions where there is a maximum amount of credit available to Elderly Developments. We believe that those requests should be treated the same as those requests made that might exceed the overall limit and suggest the following language:

"...For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000,

whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published in the Site Demographic Characteristics Report after the release of the Internal Revenue Service ("IRS") notice regarding the 2016 credit ceiling. For all Applications, ~~T~~the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded…"

(We are assuming here and in comment below on the same subject, that an estimate would be released in December when the other Regional Allocation Formula estimates are released such as the maximum funding request allowable to achieve points under §11.9(f)(8), and that a final amount would be released in early 2016, when the IRS releases the formal notice regarding credit available based on population. If that is not the case we request that it be clarified in the rule or elsewhere.)

Section 11.4(c)(2), related to Increase in Eligible Basis (30 Percent Boost)

We would like to express our support for the addition of the language related to Small Area Difficult Development Areas.

Section 11.6(3), related to Award Recommendation Methodology

We request some clarification with respect to the calculation of the maximum percentage of credits available for Elderly Developments, particularly as it relates to returned credits. For instance, if there is $6 million in credit available in a particular sub-region, and data suggests that 25% of the credit should be available for applications proposing to serve an elderly population (because the difference between the number of affordable age-restricted units and the number of eligible elderly households is only 25% of that same difference for the entire population in the sub-region), then $1.5 million is available to elderly applications. This comment is based on the assumption that staff will consider all awarded (but not placed in service) applications to date when performing this initial calculation. If credit is returned from an application awarded in a previous cycle, we believe the amount of credits available to elderly applications (that $1.5 million) should not be adjusted and that the credit returned should not be considered in any subsequent calculations. First, this will provide certainty to the award methodology process. Second, if the returned credit were to be considered, not only would the ultimate amount of credit available for elderly applications need to be recalculated, but the percentage itself would also need to be recalculated since the return could actually impact the calculation by changing the number of existing housing tax credit units in the sub-region. (For example, a $750k return on an 80-unit general population development might yield data that suggest only 22% of the now $6,750,000, or $1,485,000, would be available to elderly developments. A return that also resulted in fewer elderly units would yield a different calculation.) We believe the possibility of never-ending recalculation based on returns could cause confusion and invites errors in the calculation, and that a maximum that is fixed at the beginning of the cycle will ensure transparency and compliance with statute.

Assuming that staff will release a final figure available to elderly application in January and that staff will consider awarded (but not placed in service) applications as "existing" developments, we suggest the following additional language in order to clarify how the percentage will be calculated upon a return of credit.

"…In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum ~~percentage~~ amount of credit~~s~~ available for Elderly Developments, unless there are no other qualified Applications in the sub-region. This includes any Applications awarded under subparagraph (B) of this paragraph. The Department will, for each such

Urban sub-region, calculate the maximum ~~percentage~~ amount available for Elderly Developments in accordance with Texas Government Code, §2306.6711(h). These ~~calculations~~ maximum amounts will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)) and will be final, regardless of any returned credit from previous cycles, but may be exceeded only if necessary to comply with the nonprofit set-aside required by §42(h)(5) of the Code."

Section 11.7, related to Tie Breaker Factors

We disagree with the idea that a very specific piece of data regarding a site (school score, poverty rate) that is already incorporated into another scoring and then again into the first tie breaker factor should be given even more weight. We believe that it would be more appropriate to include other criteria (outside those related to the Opportunity Index, which is considered a criteria that supports Texans most in need). The QAP lists three other categories: those promoting high quality housing, community support and engagement, and an efficient use of resources. We believe it would be more appropriate to include a criteria related to one of these other categories as a tie breaker factor. Further, the QAP also includes an entire section on de-concentration factors, and the Rules contain an entire section related to community assets. We believe that either of these factors would be appropriate as well. We first suggest deleting entirely the tie breaker factors related to poverty rate and school ratings. Secondly, we suggest the following language regarding the last tie breaker factor:

"...Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population..."

Finally, should staff choose to include additional factor(s) we suggest the following options, listed in the order by which we find them most appropriate:

1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.
2) Applicants with a portfolio that has a compliance history in the lowest category as determined in accordance with 10 TAC §1.301, related to Previous Participation;
3) Applications eligible for the highest number of points under §10.101(a)(2), relating to Mandatory Community Assets;
4) Applications in census tracts with the lowest percentage of Housing Tax Credit Units per household;
5) Applications with the highest combined scores for Local Government Support, Commitment of Development Funding by Local Political Subdivision, Declared Disaster Area, Quantifiable Community Participation, Community Support from State Representative, Input from Community Organizations, and Concerted Revitalization Plan under subsection §11.9(d) of this chapter (relating to Competitive HTC Selection Criteria);
6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population

Section 11.9(2)(A), related to Sponsor Characteristics

We suggest that the threshold for the HUB or nonprofit partner participation be lowered to a combination of ownership interest, cash flow from operations, and developer fee taken together to equal at least 50 percent with no less than 5 percent in each category. While there are some HUBs and nonprofit organizations that have extensive experience, part of the purpose of the scoring item is to give more experience to organizations that have some but that still need partners. We believe that those with more experience will be able to successfully negotiate more interest but that a combined 50 percent is fair for those HUBs and nonprofit organizations that are using the partnership to gain additional experience.

Section 11.9(b)(2)(B), related to Previous Participation Compliance History

We support this concept in general and believe that it could be given even more weight, up to 4 points. The performance of the developers and owners that participate in this program is paramount to its success. As difficult as it is to assemble a competitive tax credit application, it is infinitely more difficult to see the commitments made in that application come to fruition. Likewise, it is meaningless to develop and own a Housing Tax Credit assisted Development and then operate it in a manner that does not adequately serve Texans in need of the housing. The only developers/owners who object to this type of scoring item are those with poor compliance histories. We appreciate that this concept has been considered in the past and has not been written into the rule, but we contend that the current Previous Participation rule takes into consideration all of the previous concerns surrounding this item. It does not penalize out-of-state developers; it takes into consideration portfolio size; it does not penalize owners for having findings but only for not correcting those findings timely; and it is generally concise and easy to understand.

We do think there are a number of ways that this scoring item could be drafted, although we reiterate the importance of it simply being included in any format. If there is a desire to revise the current draft, we would also support a scoring item that awarded 2-4 points for those Applicants with a Category 1 portfolio and 1-2 points for those with a Category 2 portfolio. We would also support a scoring penalty (negative 1 or 2 points) for those with a Category 3 or 4 portfolio, only because we see this as having the same impact. In addition, we would support a scoring item that took into account the compliance history of only the majority owner of the general partnership interest, so that owners with good compliance histories would still be motivated to partner with a non-profit or HUB that might have had some compliance issues in the past. The point is that compliance history remain a factor in determining whether or not an Applicant should receive an award of housing tax credits.

Sections 11.9(c)(2) and (3), related to Rent Levels of Tenants and Tenant Services

We believe that the additional points available to Supportive Housing Developments under these two scoring items should be removed. Supportive Housing Developments are by definition developments that have a number of funding sources that do not constitute permanent debt. Also by definition, it is expected that those sources will require that the property serve particular populations, which may translate into those developments having additional units restricted at 30% AMI rents and/or provide additional services. We do not believe that meeting the requirements of outside funding sources should necessarily garner additional points on a housing tax credit application. The benefits of serving those populations are realized through the other funding source(s). In addition, Supportive Housing Developments are already afforded a number of other concessions in the Rules, including numerous underwriting considerations (including the ability to have owner contributions not counted as deferred fee); exemptions from otherwise required development amenities, minimum unit sizes, and unit and development features; and in the current draft additional consideration with respect to scoring points under Cost of Development per Square Foot. At minimum we suggest that only the highest scoring Supportive Housing development in any given region have access to these additional points. Otherwise, the QAP as currently written highly favors this type of development over developments that serve the general population or the elderly. It is our understanding that developers of Supportive Housing are seeking additional concessions not only in the QAP and Rules but also in the Direct Loan NOFAs that are currently being developed. We point out that, while it is may be possible to compile different parts of statute in a manner that implies that providing this very particular type of housing is a primary purpose of the Department, we could not find it explicitly stated. We appreciate that some local governments have taken it upon themselves to incentivize supportive housing and believe that those incentives should remain with those local governments and not with the state, at least not to the detriment of other types of affordable housing providers.

Section 11.9(c)(4)(A), related to Opportunity Index in an Urban Area

We are generally opposed to the use of distinction designations by the Texas Education Agency ("TEA") to determine whether or not a school is considered high performing because of the methodology behind those distinctions. The TEA manual indicates that these are determined after schools are put in "comparison groups" with schools across the state, and these groups can vary greatly in size. We do not think this is an accurate reflection of a school's general performance, as the "worst of the best" might earn a distinction while the "best of the worst" might not. In order to achieve a Met Standard rating and therefore be eligible for a distinction designation, a school only needs to meet targets on three indexes; therefore, it is not difficult to find schools that have very low scores on the performance index report (one school achieved only 61, 24, 33, and 13, respectively, as a specific example) and still achieve a distinction designation. Even though the current draft calls for the school to also achieve a 77 on the index 1 score, we still find this inappropriate as a determinative factor. The Opportunity Index is appropriately designed to compare one part of an MSA to another, not to compare a census tract in Spring to one in McAllen. Using distinction designations violates that concept. If staff thinks it is appropriate to insert a 6-point scoring item into the Opportunity Index, we suggest that they do so by introducing a new factor or simply compressing the scoring, not by arbitrarily adjusting the thresholds for either income, poverty rate, or school ratings. For instance, because proximity to community assets has been presented as a priority by staff, it could be included in the Opportunity Index without undermining the policy objective of the index itself. We suggest one of the following possibilities:

"...(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (~~5~~6 points);

(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (~~5~~4 points); or

(iv) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (~~1~~2 points)."

Or:

"...i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1

of the performance index, related to student achievement, and is within three miles of a full service grocery store, pharmacy, and urgent care facility (~~5~~6 points);..."

Section 11.9(c)(4)(B), related to Opportunity Index in a Rural Area

We would like clarification with respect to Development Sites in districts with "choice" programs. The current draft indicates that in the case of a site in a district with a "choice" program that the closest school, regardless of distance to the Development Site, must have an index 1 score of 77 in order to achieve one point under clause (i). Although we do not necessarily object, this does not seem consistent with the concept of the rural opportunity index, which in general requires first one threshold that does not involve proximity to services or community assets and then a second criteria which does require such proximity. Instead it seems redundant considering the first "threshold" requirement for points. We would suggest that either the requirement for the point be proximity to the elementary school or in the attendance zone of a highly rated middle or high school.

In addition, we disagree with the concept of elderly developments having access to points for being in proximity to "services specific to a senior population" as well as being in proximity to a senior center. We suggest deleting one or the other.

Section 11.9(c)(4)(C), related to Opportunity Index

We believe the Department needs to address the issue of "choice" programs and that the deletion of the sentence that previously addressed this situation is problematic. We believe that in districts with these programs the district rating should be used. We object to the idea of using only the rating of the closest school to the Development Site when evaluating schools that are part of a "choice" program. True "choice" programs do not just allow students to choose to attend a school outside of a designated attendance zone; students are required to make these choices. Because there is truly no "default" school, we believe it is inappropriate to assume that the closest school is the one that the students will most likely attend. It is very possible that a school that is closer might be across a major highway and not be the logical choice at all, with respect to either school rating or transportation. Therefore we suggest the following:

"...In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating..."

Section 11.9(c)(5), related to Educational Excellence

First, we reiterate our comment above with respect to choice programs. In addition, we believe that using the district rating in cases with district-wide enrollment is more appropriate than using the rating of the nearest school since there is no guarantee that the tenants will attend the nearest school.

More importantly, we object to the concept of awarding 3 points to applications proposing Development Sites in attendance zones of schools that only have a Met Standard rating. We do not believe this is in keeping with the idea of educational excellence and would severely dilute the impact of this scoring item. It should be noted that the initial staff draft included a threshold item with respect to being in attendance zones of schools with a Met Standard rating. While we appreciate staff's decision to remove that threshold item, we also recognize that staff's position was that locating developments in the attendance zones of schools that are at least performing at a satisfactory level is something that all applicants should be striving to accomplish. Although we are not proposing such language here, we believe that, in response to staff's initial suggestion, it would be more appropriate to take points away from applications proposing sites in attendance zones of schools that did not have a Met Standard rating than to award points to

applications that are only meeting requirements staff initially considered to be mandatory. We do believe that it is appropriate to give this scoring item even more weight and suggest the following language:

"...An Application may qualify to receive up to four (4) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (C) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating...

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (4 points);
(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating. For Developments in Region 11, the middle school or high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points);
(C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points).

It should be noted in developing the suggested language above that we have not analyzed the data from the current year in order to conclude that an index 1 score of 70 is an appropriate threshold for middle and high schools in region 11 but agree generally that it should be lower than the other regions.

Section 11.9(c)(6), related to Underserved Area

We disagree with the concept of high growth areas being equated to underserved areas. We believe that the idea of an underserved area is one that is underserved with respect to the amount of affordable housing available. This is why the other paths to score under this item relate to the proximity of other housing tax credit assisted developments and to areas that are particularly difficult to develop. It is very possible to have significant growth as defined in the current draft and also have a high concentration of affordable housing. We see high growth areas as already more attractive to real estate developers and unnecessary to further incentivize. However, we do believe that high growth areas inside large MSAs that lack affordable housing should be incentivized and so suggest that the same criteria used for rural developments be used for urban developments. In addition, we foresee that the administration of this concept as currently drafted could be difficult as staff would need to substantiate evidence regarding new businesses constructed within a particular timeframe and hiring a specific workforce. We believe that this type of language will lead to countless hours of research on the part of staff which would end in multiple appeals and third party requests for administrative deficiencies. We suggest the following language:

An Application may qualify to receive up to two (2) points if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

"...(A) The Development Site is located wholly or partially within the boundaries of a Colonia...(2 points);
(B) An Economically Distressed Area (1 point);
(C) A census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population. (2 points);
(D) A census tract that has not received a competitive tax credit allocation or a 4 percent noncompetitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point).

Section 11.9(c)(7)(A), related to Tenant Populations with Special Housing Needs

We generally disagree with the concept of awarding applications points for something that is not relevant to the actual development being proposed in the application, and we believe that is what is being done by awarding an extra point (3 as opposed to 2) to applicants who have in their portfolio an existing development that includes units set aside to participate in the Department's Section 811 Program. We believe that it is not just an unfair advantage to those developers that may have developments in their portfolios that qualify to participate in the 811 Program but simply not an appropriate way to evaluate the merits of the development proposed in the HTC application. We are also concerned that those applicants who are able to access these points may not necessarily have good compliance histories. Additionally, we believe that incentivizing participation in the 811 Program via this mechanism will not necessarily deliver more 811 units much sooner than it would if HTC applicants were only required to place the 811 units in the developments proposed in the 2016 applications. Therefore, should staff choose to include this option for an additional point, we suggest that they only be awarded if the applicant can provide evidence of a good compliance history and can actually execute an agreement with the Department before the HTC application is submitted. We propose first that the option in this subsection for accessing 3 points be deleted entirely, but alternatively suggest the following language:

"...(A) Applications may qualify for three (3) points if evidence is provided in the Application that a Memorandum of Understanding ("MOU") or other appropriate document has been fully executed by the Department and Applicant (or Affiliate of the Applicant) ~~if a determination by the Department of approval is submitted in the Application~~ indicating participation of an existing Development~~'s~~ in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the portfolio of the Applicant must not have compliance history of a category 2, 3, or 4 as determined in accordance with 10TAC §1.301, related to Previous Participation, and.the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application."

Section 11.9(c)(8), related to Aging in Place

We generally disagree with the concept of this additional scoring item. We understand that it is meant to "replace" the Educational Excellence scoring criteria for elderly developments and that the argument for doing so is that being in the attendance zones of high performing schools is not important to the tenants of an Elderly Development. In addition, some contend that this will prevent developers serving the elderly population from competing over the same sites as those developers serving the general population. We disagree on all accounts. First, considering the new definition of "Elderly Development," it is quite possible that tenants in these developments would have children and so being in the attendance zones of high quality schools would most definitely benefit them. Secondly, even if the tenants do not have

children, being in the attendance zones of high performing schools is simply one of many indicators of a high quality neighborhood in general. This is something that we believe tenants of all ages seek when exercising their choice of where to live. In addition, we do not believe that this would solve any perceived problems regarding developers competing for sites. Applicants are competing for credits, and so anything that would create a "path of least resistance" that is available to one applicant and not another makes it more difficult for the developer without access to that path. We contend that the developer without access to that path would prefer the competition for the site over no access to the less resistant path. If staff does find that there should be a different "path" for elderly developments to compete for credits, then we would suggest at minimum that it be driven by location just as the Educational Excellence scoring item is. While the location of a development is a known fact at the time of application, a commitment to perform certain actions (in this case, develop accessible units and provide services) is in reality an unknown. It very is possible that an Applicant would fail to meet these requirements, and while we appreciate that this is the case for a number of other scoring items, in this particular case it would mean having denied credits to an Applicant that was clearly already meeting the (equivalent) requirement. We suggest deleting the scoring item in its entirety.

Section 11.9(c)(9), related to Proximity to Important Services

As stated previously with respect to §10.101(a)(2) related to Mandatory Community Assets, we disagree with the concept of this new scoring item. Again, while this is not meant to be commentary on whether or not the Department is subject to the Remedial Plan, we would point out that the Remedial Plan did call for staff to remove all development location incentive criteria (outside of the Opportunity Index, Educational Excellence, and those otherwise mandated by statute or federal law) from the QAP. We believe adding this location specific incentive could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index. We did, however, suggest changes to Mandatory Community Assets that incorporate the idea of the importance of proximity to certain community assets. We suggest that this scoring item be deleted in its entirety.

Section 11.9(d)(7), related to Community Revitalization Plan

We generally support the language in this subsection but suggest that the rule could also address instances where cities may develop a revitalization plan in response to a natural disaster. We believe this is in keeping with the overall policy objective behind the rule and suggest the following language:

"...(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) commercial blight, streets and/or sidewalks in significant disrepair;

(-b-) long-term disinvestment, such as significant presence of residential and/or declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as
the manufacture or distribution of illegal substances or overt illegal activities;

(-c-) destruction of property as a result of a natural disaster"

"...(III) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. While it will generally be expected that ~~T~~this funding ~~must~~would have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service, plans that are more recently adopted due to events that created cause for such a plan may be considered if sufficient evidence is provided to indicate that it is reasonable to expect that the goals of the plan will be able to be met."

Section 11.9(e)(6), related to Historic Preservation

We believe that the point value associated with this scoring item is too high and should be reduced to 2 points. Section 2306.6725 of the Texas Government Code lists several items that are required to be incentivized through the QAP, including leveraging resources, serving traditionally underserved areas, and extending affordability periods, all of which only have one or two points associated with that incentive in the QAP. We do not believe that statute calls for this particular item to be given such a high priority. In addition, because this item is in a very practical sense a location specific criteria, we believe there is potential for this scoring item to undermine the objectives of the Remedial Plan and specifically the Opportunity Index if given too much weight. We propose the following language:

"…An Application includes a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive up to two (2) points. At least one existing building that will be part of the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical
Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status."

Thank you very much for your consideration of our comments and for all of your work in developing these rules.

Sincerely,

Craig Lintner

Craig Lintner
Senior Vice President

(49) National Church Residences

From: Tracey Fine
To: Teresa Morales
Cc: Tom Gouris (tom.gouris tdhca.state.tx.us); Eric Walker
Subject: Public comment regarding interpretation of HB 3311
Date: Thursday, October 15, 2015 3:08:21 PM

Teresa,

First of all, thank you for all your hard work and patience listening to the development community. I know I submitted a lengthy letter on why HB3311 should not apply to At-Risk set-aside yesterday as part of my public comments. I had a chance today to spend time reviewing Texas Code 2706.111 and I think it provides further support for the case. Please include as additional public comment.

Reasons to Exempt At-Risk to the formula creating an Elderly Development cap in HB 3311:

1. Texas Code 2706.111 (d-1) " In allocating low income housing tax credit commitments under Subchapter DD, the department shall, before applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of housing tax credits required under Section 2306.6714."

The formula in HB 3311 applies a limit to Sub-regional allocations. Since tax credits for At-Risk are allocated and committed before the department applies the regional allocation formula, it should be exempt from any Elderly cap implemented under sub-regional allocations.

http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm

2. The HB 33111 Bill Analysis by both Community Affairs and IGR states the intent of the bill is to "add parity to the application process to help ensure

that seniors are provided access to affordable housing resources." If the formula creating an Elderly tax credit cap was applied to the At-Risk set-aside, it would have the exact opposite effect of the bill's intent by significantly reducing the dedicated Senior tax credits.

http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=84R&Bill=HB3311

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Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs

Re**: Interpretation of HB 3311**

Dear Mr. Irvine,

National Church Residences believes HB 3311 has been misinterpreted by TDHCA in the 2016 Draft QAP for Texas' LIHTC program. The intent of HB 3311 was to give point parity to Elderly Developments as these applications previously had a competitive disadvantage compared to General Population Developments. As stated in the Committee Report / Bill Analysis on Urban Affairs and IGR, the bill "*C.S.H.B.3311 seeks to add parity to the application process to help ensure that seniors are provided access to affordable housing resources*."

The original bill, as introduced, proposed only point parity for Seniors. It is generally accepted that building new Low Income Elderly Developments are more palatable to communities compared Low Income Family Developments. As a result, the community raised concerns that point parity alone could contribute to an unbalanced number of Elderly Development applications for new units compared to General Population applications for new units. The bill was then amended to include an allocation cap to urban Elderly developments to ensure Family developments would get done. However, in At-risk, the properties already exist so the same NIMBY issues are not present to sway developers to pick Elderly over Family.

The intent of HB 3311 was not to be implemented in the Preservation or At-Risk set aside for the following reasons:

- At-Risk set aside is NOT subject to sub-regional pool caps and thus is NOT subject to the Elderly sub-regional cap;
- At-Risk developments do NOT increase the number of new low-income elderly units created;
- HB 3311 does NOT specify that the cap is to be applied to the At-Risk Set Aside;
- At-Risk Elderly and At-Risk General population developments have equal scoring so there is no extra incentive to preserve Elderly over Family; and
- By splitting the limited amount of funding under the formula, the State would be implementing the exact opposite of its intention of "ensure[ing] that seniors are provided access to affordable housing resources."

At-Risk competing against New Construction- unequal
Having At-Risk compete against New Construction does not work. Since New Construction applications in Sub-regions score on average 2.5-3 points HIGHER, it is unlikely At-risk would have a higher score than New Construction and would thus go unfunded.

2015 Awards and Scoring

Average At-Risk Score w Award	160
Average At-Risk Elderly w Award	159
Average Urban (region 3,6,9,7) w Award	163
Average Urban Elderly (region 3,6,9,7) w Award	161.5

Furthermore, under Award Methodology in the QAP, the At-Risk set-aside is a higher priority than the Sub-regions and thus should have priority should a cap be implemented. Specifically stated on page 10

of the QAP under At-Risk Set-Aside Application Selection priority: "this step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps."

The methodology favors either At-Risk or New Construction Sub-Region, making it challenging to fairly apply the rule. Guidance wasn't given on this topic as the At-Risk set-aside was not intended to be included.

Devastating to At-Risk Elderly Communities and Growing Senior Population
There is likely only enough cap to allocate 1 Elderly project per sub-region. In 2015, there were 9 Elderly allocations combined in effected Sub-regions including At-risk in the same sub-regions. If the cap is implemented to cover At-Risk, likely only 4 Elderly projects will get funded in these regions in total.

Implementing the Elderly cap in the At-Risk set aside would be devastating for hundreds of existing senior developments throughout the majority of Texas. The bill would not have been passed if the intent was to stifle a community by blocking a Preservation / At-Risk Elderly development from accessing the needed capital to remain viable real estate serving some of Texas' most vulnerable Seniors.

There is not enough senior affordable housing to meet the need. In 2012, there were 11.5 million extremely low-income renters in the US and only 3.3 million affordable apartments available, leaving a gap of 8.2 million affordable homes nationwide. Further, as the seniors who live in affordable housing age, so do the properties, which were often built 25+ years ago. It is critical to preserve these communities because if we don't, we risk losing precious and limited affordable housing stock permanently, much of which is heavily subsidized. As the buildings age, there are no other resources available other than the Low Income Housing Tax Credit (LIHTC) program to preserve these communities so they remain a safe and healthy residence for our seniors to age in place with dignity.

It is estimated that in the US, 10,000 people will turn 65 everyday for the next 15 years. Since Texas is one of the most populace states in the nation, we will directly be experiencing this growth. With Texas' existing and tidal wave of aging Seniors, we cannot afford to interpret HB 3311 to include At-Risk, dividing affordable housing resources to Seniors in half, a direct opposite of the bill's intention.

I ask that TDHCA honor the intent of HB 3311 by not implementing an Elderly cap to the At-Risk set aside.

Kind regards,

Tracey Fine
Project Leader
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tfine@nationalchurchresidences.org

cc: Eric Walker, Matt Rule

October 14, 2015

Ms. Teresa Morales
Interim Multifamily Director
Texas Department of Housing and Community Affairs

Re**: Public Comment for 2016 QAP and Rules**

Dear Teresa,
Thank you for the opportunity to present recommendations for the 2016 draft Qualified Allocation Plan (QAP). Included below are recommendations on behalf of National Church Residences.

2016 Qualified Allocation Plan

1. **HTC Allocation Process – (3) Award Recommendation Methodology / HB 3311**
   Please see separate letter outlining our concerns about how TDHCA will implement this bill.

2. **Opportunity Index – Raise the Poverty Rate to 20%**
   We encourage TDHCA to raise the poverty rate from a threshold of 15% to 20%. This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunity".

   In addition, in an article published by HUD on neighborhoods and poverty rates states "that the independent impacts of neighborhood poverty rates in encouraging negative outcomes for individuals like crime, school leaving, and duration of poverty spells appear to be nil unless the neighborhood exceeds about 20 percent poverty"
   http://www.huduser.gov/portal/periodicals/em/winter11/highlight2.html

   Not only will several very worthwhile communities benefit from this change, TDHCA can further enhance their goals of awarding projects considered high opportunity in high performing schools for the following reasons:
   - This would allow a larger group of census tracts to be able to score on high opportunity thus promoting further de-concentration of awards;
   - This would better allow projects in very desirable and high-income communities with highly rated schools to be more competitive;
   - Projects would still be required to be in the 1st or 2nd Income Census tract in Urban areas – areas already considered "high opportunity";
   - Would allow more desirable sites that are closer to services and town centers in rural areas to be more competitive ;
   - This change helps alleviate the issue that Residents living in preservation properties are part of the poverty rate, and making their own communities uncompetitive.

3. **Aging in Place**
   We are very pleased that staff recognizes the importance of services at senior properties. However, as I spoke at the Board meeting on 9/11/2015, requiring 100% of the units to be mobility accessible is unnecessary and does not support the target population. Seniors prefer to live in a standard unit and find a 100% mobility campus stigmatizing and institutional. To effectively implement TDHCA's goals of Aging in Place, we recommend the following:

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (1 point):

a. "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms;
b. Chair height (17 – 19") toilets in all bathrooms;
c. A continuous handrail on at least one side of all interior corridors in excess of five feet in length; and
d. 100% of units include blocking in showers/tubs to allow for grab bars at a later date to adapt the unit if needed/requested in the future.

(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 points):

i. A minimum of 16 hours per week for Developments of 80 units or less; or
ii. A minimum of 32 hours per week for Developments of 81 +units.

4. Aging in Place – Point Parity

Again, we are thrilled that TDHCA recognizes that housing seniors requires different services and amenities than general population projects. Under the current QAP, Aging In Place is 3 points while Educational Excellence is 5 points. As a result, there is not point parity for Elderly developments as required under HB 3311. In order to comply with HB 3311 and encourage saving precious high performing school sites for family projects, we ask that these two categories remain equal in scoring.

5. Aging in Place for Supportive Housing for Households without Children

We recommend that Supportive Housing comprised of 100% 1 bedroom and efficiency units serving single adults or households without children be allowed to score under Aging in Place in lieu of Educational Excellence. Single adults/Households without children do not house school-age children and schools are not a resource for this very vulnerable population.

At National Church Residences, we either own and/or manage approximately 700 units of Supportive Housing specifically with an emphasis on homeless, at-risk and disabled individuals living single. Our average age is 51 and 76% of our residents have a disability. Incentivizing Supportive Housing for single adults to be coupled with services and accessible design features would be a tremendous resource in serving this vulnerable population.

Recommended language:
(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development and Supportive Housing that serves households without children (100% 1 bedroom and/or studios) may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

**Note –Per Housing Authority administration, a 1 bedroom serves up to 2 adults of the same generation. A 2 person household with 1 adult and 1 child under age 18 would require a 2 bedroom unit.

6. Criteria promoting the efficient use of limited resources and applicant accountability / Cost of Development per Square Foot.

A. TDHCA recognizes that high cost developments including Elderly Developments with elevators are more costly for new construction. Extra expenses that are categorized as High Cost in new construction also raise costs in Preservation developments and thus, need to be recognized as high cost developments. In order to appropriately make critical repairs for an elevator building, update and improve ADA compliance, include design features for Aging In Place, improve green and sustainable features among other repairs, $/SF must be increased, particularly since this includes acquisition costs. This is especially critical for Elderly properties where 100% of the units are small and the $/SF is based only on rentable area. We propose the following language:

(e)(E)(ii) Applications proposing Adaptive Reuse or Rehabilitation:
Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the development is considered a High Cost Development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

B. $/SF limitations have not increased since 2013. While we understand TDHCA's desire to award credits to the maximum number of developments, construction and labor costs have rapidly inflated 8-12% annually during this time period. The $/SF limitation unfairly hurts Elderly and Supportive Housing serving single individuals (100% studios and 1 br units) because the bulk of costs are in the kitchen and bathrooms so these costs cannot be spread over larger size units as in family developments. Projects serving these vulnerable individuals are limited to $50,000-$65,000 a unit for an elevator building or $100/sf (including extra 50 feet per unit for S.H.). This is especially unrealistic for an elevator building in urban areas like Austin.

In addition, this incentive encourages lessor quality materials along with forgoing green and sustainability standards. These lower quality materials also result in higher maintenance and utility costs which ultimately get passed to residents in the form of rental increases. We request TDHCA increase all $/SF limitations by 15% to account for actual hard cost increases and inflation since 2013.

7. Underserved Area (F)

We appreciate the addition of recognizing the importance of new job opportunities. However, a significant amount of job growth in higher wage jobs occur in leased office space and not a "constructed new facility". We recommend adding in a company that has leased new and/or additional office space to account for this white collar and high wage job growth.

Recommended language:
(E)Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and or additional) office space and undergone initial hiring of its workforce…

2335 North Bank Drive Columbus, Ohio 43220 Phone: 800.388.2151 Fax: 614.451.0351 www.nationalchurchresidences.org

8. **Sponsor Characteristics – Previous Participation Compliance History**
   National Church Residences does not support the addition of 1 point for Category 1 under Pervious Participation Compliance History. There are numerous instances when a non-compliance issue cannot be cleared because the remedy is completely out of the Owner's hands. In addition, corrective actions are beholden to TDHCA's response time, which in our experience, has taken several months. These citings do not translate into poor owners and managers and many quality developers and owners are being unfairly penalized by not being able to capture this additional point.

9. **Opportunity Index- Rural**
   We are pleased that TDHCA recognizes the need to couple Elderly Developments with services in lieu of schools. Below is guidance on what we recommend for "access to services specific to a senior population":
   - Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site);
   - Access to primary health care including partnerships for on-site services, urgent care clinics that accepts Medicaid/Medicare, Primary care doctors offices that accept Medicaid/ Medicare, ERs and Hospitals; or
   - Other senior appropriate services as evidenced by the applicant.

2016 Underwriting Rules

10. **Mandatory Development Amenities**

    We recommend that central air not be required for acquisition/rehabilitation properties for all one-bedroom and efficiency units that do not currently have this feature and operate with PTACs for the following reasons:

    - A PTAC unit is sufficient to adequately and comfortably heat / cool and can be adapted successfully for both efficiency and one-bedroom units.
    - The cost to replace a PTAC system with central air is cost prohibitive in an existing project. For example, on National Church Residences' Prairie Village in El Campo, Texas (a 38-unit acq/rehab), the cost to replace the existing PTACs with high efficiency PTACs would have been $85,000 versus installing central air at $290,000. The project could have **saved $163,685 ($4,307/unit)** by using high efficiency PTACs. These funds could have been spent more effectively and had greater impact elsewhere.
    - The QAP's $/SF point advantage that restricts the amount of hard costs makes it difficult to add this cost into the budget while remaining competitive. Adding this cost will require eliminating other critical scope.
    - PTACs are much less expensive as it relates to long-term maintenance costs. A non-certified technician can maintain a PTAC, while split system maintenance requires a certified technician, further increasing the operating expenses of the project.

Proposed Language:

(L)All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO, Efficiency Units AND Rehabilitation developments consisting of efficiency and one bedroom units that currently have PTACs only);

Note: We recommend a PTAC with an EER 11.5 rating.

11. Undesirable Neighborhood Characteristics – Schools

Please remove from threshold the requirement that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. This additional barrier ensures that no new quality affordable housing is constructed in gentrifying urban areas. Furthermore, this rule does not take into account Supportive Housing developments for individuals (100% studio and 1 bedroom) that only lease to adults, who have no need or use for a higher performing school. At the very least, the Elderly exclusion should be for ALL Elderly Developments, not just "limitation" as all Elderly Developments are designed and intend to serve Elderly who do not use primary schools.

12. Mandatory Community Services and Other Assets.

We recommend amending item (X), On-site Service Coordinator under Tenant Supportive Services to be consistent with the Aging-in-Place language so that smaller developments can effectively implement this expensive, yet extremely important service.

We recommend TDHCA amend item (X) "a full-time resident services coordinator with a dedicated office space at the development" to:

- *(X) An on-site resident services coordinator at the development that works a minimum of 16 hours per week for developments of 80 units or less and a minimum of 32 hours for developments 81 units or more.*

13. Neighborhood Scout

Please remove the use of Neighborhood Scout as a crime index. This tool does not accurately portray crime and safety in neighborhoods. As a result, excellent and desirable sites will be eliminated. TDHCA ended the requirement to use this website after noting problems with the site's data collection prior to the 2015 QAP. Recommended language:

(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com.

We appreciate the opportunity to provide comments and would be happy to provide any additional information.

Sincerely,

Tracey Fine
Project Leader
Office Location: Austin, Texas
Cell: 773.860.5747
tfine@nationalchurchresidences.org

CC:
Eric Walker
ewalker@nationalchurchresidences.org
Work: 614-273-3734

(51) Texas Association of Community Development Corporations

ENHANCING COMMUNITIES THROUGHOUT TEXAS

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Azteca Economic Development and Preservation Corporation

Gary Lindner
PeopleFund

Matt Hull
Executive Director

October 15, 2015

Mr. Tim Irvine
Ms. Marni Holloway
Texas Department of Housing and Community Affairs
Attention: Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Tim and Marni:

The Texas Association of Community Development Corporations appreciates the opportunity to address some of our members' concerns regarding the 2016 Draft Rules. We are especially appreciative of the Department's availability to our organization and willingness to work with us and all other stakeholders.

Multi-Family Rules:
10.901 Application Fee: TACDC members are opposed of changing the language regarding the Application Fee for nonprofit organizations from "will receive a discount of 10% " to "may be eligible to receive a discount of 10%". We feel the language should remain as previously stated in the rules to provide a small, but meaningful incentive to nonprofit developers.

10.101 Site and Development Requirements and Restrictions- Use of Neighborhoodscout.com
TACDC members are uncomfortable with the agency's requirement to use neighborhoodscout.com to determine crime rate and statistics within the same census tract or within 1,000 feet of the proposed development site.

Our concerns are twofold: First as proprietary software, we are unsure how the website owners collect, analyze, and report data across a city. Second, a few of our members have tried to replicate and reconcile the data reported in neighborhoodscout.com with publically available data from their police department and they were unable to do so. In some instances, the rates of violent crime have been misreported to a large degree and in other cases when comparing crime rates across different neighborhoods, neighborhoodscout will report that one neighborhood has more violent crime compared to another when the police data says just the opposite. TACDC members suggest the agency not rely on this website for purposes of TDHCA's multifamily programs.

10.101 Undesirable Neighborhood Characteristics – Schools
TACDC members support National Church Residences request to remove from threshold the requirement that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. This additional barrier ensures that no new quality affordable housing is constructed in gentrifying urban areas. Furthermore, this shortsighted rule does not take into account Supportive Housing developments for individuals (100% studio and 1 bedroom) that only lease to adults, who have no need or use for a higher performing school. At the very

Texas Association of Community Development Corporations
2200 East Martin Luther King Jr. boulevard Austin, Texas 78702 ★ phone (512) 916-0508 ★ fax (512) 916-0541 ★ www.tacdc.org

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least, the Elderly exclusion should be for ALL Elderly Developments, not just "limitation" as all Elderly Developments are designed and intend to serve Elderly who do not use primary schools.

Qualified Allocation Plan:
11.9 Aging in Place. (§2306.6725(d)(2), TACDC members are pleased to see the inclusion of points for hiring an onsite service coordinator. However, our members have a concern that the effectiveness of the service coordinator will be diminished if the person is part of the property management team. TACDC members request clarification that the person is a dedicated service coordinator and is not part of the property management team to help ensure the effectiveness of the service coordinator.

11.9 Concerted Revitalization Plan: TACDC supports the comments of Houston LISC regarding this section and generally concurs in the proposed revisions to Subsection (i) (I-III). These dictate that the concerted revitalization plan must have been adopted by the municipality or county in which the site is located, that the problems identified in the plan be identified via a public process, and what problems and elements generally should be considered in the plan.

Like Houston LISC, TACDC does not support the requirements of Subsection (i) (IV) that the funding for implementation of the plan be such that the problems identified in the plan be solved prior to the Development being placed in service. As proposed, this requirement would mean that investment in affordable housing would come very near the end of the revitalization process and not before. While we would concur that investment in affordable housing should not necessarily occur at the beginning of the revitalization process moving it to the end (1) negates the positive impact affordable housing development can have on an area that is on a positive revitalization trajectory and (2) may make impractical the purchase of the land for an affordable housing development project due to rising land costs in an area that is at the end of its redevelopment cycle.

We believe the language used in the most recent QAP (2015) is more appropriate. This language dictates that "the community revitalization plan must already be in place" and that "funding and activity under the plan has already commenced".

We would therefore propose that Subsection (IV) be revised to read as follows:

(IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timeline. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be mitigated within a period of time commensurate with the plan's timeline prior to or after the Development has been placed in service.

Asset Management Rules:
Similarly to our concerns under 11.9(b)(2) regarding Sponsor Characteristics, TACDC members are concerned that 10.406(d) under the Asset Management Rules may encourage the removal of participating nonprofit organizations from the

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development ownership structure without cause and beyond the legislative intent of HB3567 regarding changes to the Right of First Refusal when selling properties. We encourage staff to look at additional safeguards to protect the ownership interest of nonprofits materially participating in joint ownership agreements.

Thank you for considering our concerns with the 2015 Draft Rules and our members will work with staff during the public comment period to suggest improvements to the final rules.

Best regards,

Matt Hull
Executive Director

7c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action to adopt the 2016 Multifamily Programs Procedures Manual

RECOMMENDED ACTION

WHEREAS, the rules relating to multifamily program funding are contained in the Administration Rules, Uniform Multifamily Rules, Housing Tax Credit Qualified Allocation Plan, and Multifamily Housing Revenue Bond Rules;

WHEREAS, the Department has created the Multifamily Programs Procedures Manual as a resource guide for applicants; and

WHEREAS, pursuant to Texas Government Code, §2306.67022 the Board shall adopt a manual to provide information regarding the administration of and eligibility for participation in the housing tax credit program;

NOW, therefore, it is hereby,

RESOLVED, the 2016 Multifamily Programs Procedures Manual is hereby approved and the publication of the Manual on the Department's website shall occur no later than the date the adoption of the Uniform Multifamily Rules and Housing Tax Credit Qualified Allocation Plan are filed for publication in the *Texas Register* and

FURTHER RESOLVED, the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, to complete the remaining portions of the manual which will provide additional guidance based on the final approved rules, and amend from time to time as it deems necessary to provide guidance on the filing of multifamily related documents.

BACKGROUND

As part of the annual rule-making process for multifamily-related funding, the Multifamily Finance Division creates a Multifamily Programs Procedures Manual. The purpose of the manual is to provide guidance on the filing of a multifamily application and other multifamily program-related documents. Staff creates this manual as a resource guide which includes references to the rules and

examples of acceptable documentation or development plans based on the program rules and requirements. The Board's action in approving the adoption of this manual allows staff the flexibility to provide more detailed instructions and amend it as necessary in order to implement the Department's multifamily program rules effectively once such rules have been adopted and approved by the Governor. Staff notes that the manual contains the main headings of various categories and/or tabs that will mirror the application and upon adoption of the rules, approval of the Governor, and the finalization of the application staff will finalize this manual with instructions, guidance and references to the rules. Additionally, from time to time staff may update the manual based on additional information that may become available or to correct inconsistencies or to clarify information contained therein.

2016 Multifamily Programs Procedures Manual

221 East 11th Street
Austin, Texas 78701

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Introduction to the 2016 Multifamily Application

Programs

All multifamily funding programs are subject to the Multifamily Finance umbrella. The multifamily components of the HOME, Neighborhood Stabilization Program (NSP), and Housing Trust Fund (HTF) are administered by Multifamily Finance Division staff. All Single-Family financing for the HOME, NSP, and HTF programs are administered by their respective divisions and are not covered in this manual. The programs administered by the Multifamily Finance Division currently include:

- 9% Housing Tax Credits
- 4% Housing Tax Credits
- Tax Exempt Bonds
- Multifamily HOME/TCAP
- Multifamily NSP
- Multifamily HTF (may include National HTF)

Consistent with the Department's organization and the Uniform Multifamily Rules and Qualified Allocation Plan, staff has updated the Uniform Application in order to simplify the application process for applicants.

General Organization of the Application

The 2016 Application has fully integrated each of the Multifamily Programs into one coherent application and is divided into seven (7) parts listed below, each of which will be briefly explained in this section, and fully explained later in this Manual.

- Administrative
- Development Site
- Development Activities
- Finance
- Organization
- Third Party
- Community Input

The **Administrative** section of the Application collects the most basic information about the proposed Development and the Applicant contact information. The purpose of the administrative section is to identify the program(s) to which the Application is submitted and includes the Applicant and Developer Certifications.

The **Development Site** section of the Application includes all of the information related to the physical location of the proposed Development site, such as the development address, census tract

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number and flood zone designation, as well as information about the schools and elected officials in the community.

The **Development Activities** section of the Application includes all of the information about what activity is being proposed, from what is being built to the services provided to the tenants. This section includes the architectural drawings and information regarding existing structures on the development site.

The **Finance** section of the Application includes all of the sources of financing, the development cost schedule, annual operating expenses, and the rent schedule.

The **Organization** section of the Application includes information about the Applicant, Developer, and Nonprofit entities involved with the Application, along with all of their owners, managers, and board members. It includes the organizational charts and evidence of experience as well as credit limit documentation.

The **Third Party** section briefly identifies the entities used for the Environmental Site Assessment, Market Study, and Property Condition Assessment, as well as any other required reports.

The **Community Input** section may include Local Government Support in the form of a resolution(s), State Representative letters, and any Input from Community Organization letters and supporting documentation.

Of particular interest is the fact that the application, with respect to the competitive 9% housing tax credit program, is not separated into sections based on eligibility and selection criteria. Instead, items that affect an application's score are found throughout the application. For instance, scoring criteria that are site-specific, such as Underserved Areas, are located in the Development Site portion of the application, while other scoring criteria, such as the Commitment of Funding from a Local Political Subdivision, are found in the Finance section.

Using this Manual

The purpose of this manual is to provide a brief description of each tab in the application and guidance as to the Department's submission requirements and what is acceptable supporting documentation. While the Department expects that this guide may not contemplate all unforeseen situations, we hope that the information will provide an adequate foundation upon which you may build your understanding of this program. This manual may in certain instances provide examples of documentation that could be submitted to comply with a particular rule or requirement. In some instances the rule may allow for alternative documentation not specifically contemplated herein, and in such instances staff will review such documentation for compliance with the applicable rule.

The Department always stands ready to assist you in understanding the tax credit program and other sources of multifamily financing offered by the Department and the means by which an application is to be presented. The Department will offer direct assistance to any individual that requires this service in the preparation of the multifamily application. However, the Department will not take the responsibility of completing the application package for you. The Department looks forward to your continuing interest in the Multifamily Finance programs and in the creation of safe and high quality affordable housing for Texans.

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Instructions for Completing the Electronic Application

What you will learn in this section:

- ✓ How to download the Electronic Application Materials
- ✓ How to convert the Excel Application to PDF
- ✓ How to set Bookmarks

All Applicants are required to use the 2016 Uniform Application, and/or any supplemental files provided by TDHCA located at the following link: (http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm).

1. To download any of the electronic Application files, right-click on the link at the website provided above, select "Save Target As" and choose the storage location on your computer. The Excel file should be named in the following format -- <Application #_Development Name>.xls (e.g. 16001_Austin_Crossing.xls). If an Application number has not been previously assigned then the file should be named as follows -- <Development Name>.xls (e.g. Austin_Crossing.xls).

2. Please do not transfer tabs from one Excel file to another, even if it is for the same Application. If you plan to submit more than one Application, please make additional copies of the 2016 Uniform Application file **after** completing portions of the Application that *are common* to all of your Applications and **before** completing any portions that are not common to all of your Applications.

3. Any cell that is highlighted yellow is available to be manipulated by the applicant. All other cells (unless specifically stated) are for Department use only, have been pre-formatted to automatically calculate information provided, and are locked. Applicants may view any formulas within the cells. Applicants may not add additional columns or rows to the spreadsheets, unless otherwise stated.

4. All questions are intended to elicit a response, so please do not leave out any requested information. If references are made by the Applicant to external spreadsheets those references must be removed prior to submission to TDHCA as this may hamper the proper functioning of internal evaluation tools and make pertinent information unavailable to TDHCA.

5. This electronic Application has been designed so that many of the calculations regarding development cost, eligible basis, and eligible point items will automatically compute once enough information has been entered. If you see a "#VALUE" or "DIV/0" in a cell these values should disappear upon data entry in other tabs.

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Tip – Complete the Development Narrative and the Rent Schedule in the Development Activities and Finance Parts of the Application first to take full advantage of the automated calculations.

6. Be sure to save the file as you fill it out!

If you have difficulty downloading files from the website, contact Jason Burr at (512) 475-3986, or Jason.burr@tdhca.state.tx.us.

Instructions for Converting the Excel file to PDF

Once the Excel Application file is complete and you are ready to convert the file to PDF, follow these instructions.

Tip- Be sure to check all of the Page Breaks in the Excel files before you convert to PDF.

Excel 2007 Users:

Click the **Microsoft Office Button** , point to the arrow next to **Save As**, and then click **PDF or XPS**.

1. In the **File Name** list, type or select a name for the workbook.

2. In the **Save as type** list, click **PDF**.

3. If you want to open the file immediately after saving it, select the **Open file after publishing** check box. This check box is available only if you have a PDF reader installed on your computer.

4. Next to **Optimize for**, do one of the following, depending on whether file size or print quality is more important to you:
   - If the workbook requires high print quality, click **Standard (publishing online and printing)**.
   - If the print quality is less important than file size, click **Minimum size (publishing online)**.

5. Click **Options**. Under **Publish What** select **Entire Workbook** and click **OK**.

6. Click **Publish**.

Excel 1997-2003 Users:

1. With the Excel file open go to the Adobe PDF drop-down box from the task bar (if using Excel 2007 click on “Acrobat” tab in the task bar)

2. Select “Convert to Adobe PDF” from the drop-down list (Excel 2007- select “Create PDF”)

3. The Adobe PDFMaker box will appear. One the left hand side of the box all of the sheets within the Excel file will be listed and you will be prompted to select the sheets you would like to covert to PDF. Once the sheets you want to convert are selected click on the “Add

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Sheets" button to move those sheets over to the right-handed side of the Adobe PDFMaker box, this will list the sheets selected to be converted to PDF.

4. Once all sheets you have selected appear on the right-hand side under "Sheets in PDF" click on the "Convert to PDF" button.

5. You will be prompted to create a name and save the PDF file. The PDF file should be named in the following format -- <Application #_Development Name>.pdf (e.g. 16001_Austin_Crossing.pdf). If an Application number has not been previously assigned then the file should be named as follows --<Development Name>.pdf (e.g. Austin_Crossing.pdf)

6. A pop-up box will appear that asks "Do you want to proceed without creating tags?" Click Yes.

Remember that there are forms that require a signature. Once you have executed all required documents scan them and re-insert the scanned forms back into the order required. The Application submitted should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

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Creating Bookmarks

Once the file has been converted to PDF and all executed forms have been re-inserted into their appropriate location within the file, you will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. You will need to designate or re-set the locations. To correctly set the Bookmark locations you must have the PDF file open in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View → Navigation Panels → Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, simply re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit. You will then right-click on the corresponding Bookmark for the form/exhibit you are currently viewing. Select **Set Destination** and a pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If Bookmarks were not already created within the Excel file, then you will need to create these Bookmarks. Go to **Document → Add Bookmark.** Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. You will then need to set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select **Set Destination**. A pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

Tabs within the Excel Application workbook have been color coded to distinguish between "Parts" of the Application consistent with this manual. Additionally, beside each bulleted item a label to use for purposes of bookmarking the final PDF Application file is included in parentheses.

If after conversion of the Excel file to PDF you have extra blank pages of any exhibit, you can delete those pages in order to limit the size of the file. To delete any extra, unnecessary pages identify the

page number(s) you want deleted. On the Adobe Acrobat Task Bar click on Document and select Delete Pages from the drop down list. A box will appear prompting you to select which page(s) you would like to delete. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following prior to submission:

- ✓ All tabs and/or volumes must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that "Fast Web View" (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the "Find" command in the PDF viewer

If you have any questions on using or experience difficulties with the Microsoft Excel based application, contact Multifamily Finance Division staff via email at firstname.lastname@tdhca.state.tx.us. In some instances a file may have small variations in bookmarks, file sizes, or readability that are not explicitly cited as requirements in the rule. Staff will use a reasonableness standard in determining when such deviations rise to the level of necessitating termination or other remedy.

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Pre-Application (for Competitive HTC only)

What you will learn in this section:

- ✓ Pre-Application delivery instructions
- ✓ Pre-Application assembly instructions
- ✓ Required Pre-Application documentation

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Pre-Application Delivery Instructions

The Pre-Application will be submitted via an online form, which will be posted to the Department's website on January 4, 2016. It is anticipated that a PDF of the form will be available on the website prior to that date for planning purposes only.

Competitive Application Cycle

The Pre-Application must be received by TDHCA no later than 5:00 p.m. (Austin local time) on Friday, January 8, 2016.

Pre-Application Assembly Instructions and Required Documentation

For each Pre-Application, the Applicant will follow a link on the Department's webpage to initiate submission. Once opened, the link will require the Applicant to enter the Primary Contact person's email address and the name and location of the development. This information will be used to create a unique URL for the Applicant to use in order to return to the Pre-Application prior to submission. It is anticipated that a PDF of the online Pre-Application will be located on the Department's website for planning purposes only (http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm). **Applicants cannot use the PDF to submit a Pre-Application.**

The online Pre-Application is divided into five pages, as identified below. There are certain fields marked with an asterisk, which are required to be completed. The form will not allow the Applicant to move to the next page without completing such fields.

❖ **Page 1: Contact Information**
- This page identifies the person(s) responsible for responding to questions and deficiencies issued by staff, the person(s) authorized to submit Pre-Application and application documentation by means of electronic transmission (i.e. ServU account), and the contact information is used to generate the Pre-Application log.
- Use the **Next** button to advance to Page 2.

- **Page 2: Development Information**
  - Enter the **Development Name** and **Proposed Entity Name**.
  - Choose the appropriate **Development Type** from the drop down list and, if applicable, the **Secondary Development Type** and **Previous TDHCA #**.
    - If **Acquisition/Rehab** or **Rehab Only** is selected, a field will appear for **Initial construction year**.
    - If Reconstruction is selected, fields will appear for **Units Demolished** and **Units Reconstructed**.
  - Choose the applicable **Target Population** from the drop down list.
  - Enter the Development's **Address**, **City**, **Zip Code**, **County**, **Region** and **Rural/Urban** designation.
  - Enter the 11-digit **Census Tract** number; the field will not allow less than 11 digits. If the Development is located within multiple census tracts, additional fields will appear. If there are more than 5 census tracts, there will be a field on the final page of the pre-application where a list can be attached.

IMPORTANT!! Double check that the census tract number is correct, as a change in census tract between pre-application and full application may result in a loss of Pre-application Participation points!

  - Enter the **Total LI Units,** as well as the Total Market Rate (MR) Units and Total Public Housing (PHA) Units, if applicable. The form will calculate the Total Units.
  - Enter the **Annual Housing Tax Credit Request**. Note that this should not exceed the "Final Funding Amount" posted in the "2016 HTC Award Limits and Estimated Regional Allocation" as of December 1, 2015.
  - The form will calculate the **Pre-App Fee Due**. If payment has already been submitted to the Department, answer Yes to the question, and a box will appear where the **Check #** can be entered. *This fee is calculated without consideration for discounts related to Applications with a non-profit sponsor, so the actual fee required may be less than what appears on this form.*
  - Check the boxes for the appropriate **Set-Aside Elections**, if applicable.
  - Use the **Next** button to advance to Page 3.

- **Page 3: Notifications**
  - Enter the U.S. Representative, State Senator, State Representative that have been notified and the appropriate Districts.
  - Enter the School District that has been notified.
  - Enter the Local Elected Officials that have been notified. Similar to the Census Tract fields, additional fields will appear as officials are entered. There are twenty-five spaces to enter local officials, after which a box will appear asking "**More than 25 Local Officials?**" If yes, attach additional list on the last page of the application.
  - Answer the question, "Are there Neighborhood Organizations whose boundaries contain the Development Site?" If yes, then a box will appear in order to list the name of the organization and its address. If the answer is no, then continue to the next page by clicking the **Next** button. There are twelve spaces to enter Neighborhood Organizations, after which, a box will appear asking "**More than 12 Neighborhood Organizations?**" If yes, attach additional list on the last page of the application.
  - Use the **Next** button to advance to Page 4.

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❖ **Page 4: Self Score**

- Select points for each scoring item from the yellow drop-down boxes. Subtotals and the total self-score will auto-populate. *Note that the score cannot change by more than 6 points between pre-application and full application in order to qualify for pre-application participation points.*
- The Government Support, Quantifiable Community Participation, Community Support from State Representative, Input from Community Organizations, and Concerted Revitalization Plan sections are not available for applicants to Self Score. These scoring items will also not be included in the calculation to determine eligibility for pre-application participation points in the full Application.

Note: There is a point adjustment field prior to the Final Self Score. This can be used to adjust a self score based on a Staff Determination. For example, a scattered site development may have an Opportunity Index score calculated to be six points, which is not an option on the drop-down menu for that scoring item. In this case, an Applicant may need to adjust the final self score. Enter negative numbers to reduce the score. *This field is not intended for manipulation of the self score in order to increase chances of being eligible for Pre-Application Participation points*, and Applicants entering information in this field should also upload their Staff Determination or request for such determination under the "Other Pertinent Information" section below.

- Use the **Next** button to advance to Page 5.

❖ **Page 5: Attachments and Certifications:**

- Before attaching any documentation, read the certifications. **NEW!** The Electronic Filing Agreement certification has been added to this section for 2016. *No hard copies of signed certifications are required,* but by clicking "**Submit Pre-Application**" Applicants are certifying to an understanding of the program requirements and the accuracy of the submission.
  - Attach **Site Control Documentation**. By attaching the document, the Applicant is certifying that the site control conforms to all applicable rules. This file cannot be larger than 7 MG.
  - Attach a **Census Tract Map**. The census tract Map will be verified against the census tract entered on the Development Information Page. **Again – be sure to double check your census tract number!** This file cannot be larger than 5 MG.
  - **Other Pertinent Information**: For prospective developments that don't fit neatly within the application, there is an attachment field that can be used to provide further information. For example, this field could be used if an Application has more than 5 census tracts, more than 25 local officials that were notified of the Pre-Application, or a Staff Determination regarding a scattered site development. The vast majority of applications will not need to attach anything in this field. This file cannot be larger than 5 MG
- Before entering the Captcha (the picture that ensures a user is not a spambot), it is highly recommended that the Applicant use the **Back** buttons to review the entire Pre-Application before submission. If the Captcha is completed and then the **Back** button is used, the Applicant will be required to complete the Captcha again.
- Once the Applicant is satisfied with the Pre-Application, read the final certification, complete the Captcha and hit the **Submit Pre-Application** button.

Once the Pre-Application is submitted, the browser will display a confirmation page with the Pre-Application number. The Applicant will also receive an email confirmation which will include a

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complete copy of the Pre-Application submission, including hyperlinks to the files attached by the Applicant. In the event that an error is identified after submission (including a file that cannot be opened from the hyperlink), the Applicant should use the **Edit Submission** link to go back to the pre-application and make the necessary corrections. **The ability to edit submissions will be disabled at 5:00pm (Austin local time) on Friday, January 8, 2016.**

Application

What you will learn in this section:

- ✓ Application delivery instructions
- ✓ Application assembly instructions
- ✓ How to fill out the electronic Application file
- ✓ Required Application exhibits

NOTE: 4% Tax Credit Applications for Bond Financed Developments can be submitted throughout the year. Submission of these Applications is based on the Bond Review Board Priority designation and the 75-day deadlines posted on the Departments website at the following link: http://www.tdhca.state.tx.us/multifamily/htc/index.htm.

Application Delivery Instructions

Deliver To: (overnights)	Multifamily Finance Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701
Regular Mail:	P.O. Box 13941 Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery of the Application. Late deliveries will not be accepted.

Competitive Application Cycle

The Application and fee payment must be received by TDHCA no later than 5:00 p.m. (Austin local time) on Tuesday, March 1, 2016. On March 1, 2016, the Department will accept walk-in delivery of the application fee payment only; the Application must be uploaded to Department's ServU system by 5:00 p.m. (Austin local time).**All required supplemental reports must be submitted simultaneously with the application** (unless otherwise noted). The online Application will be disabled at 5:00 p.m.

Mailed or courier payments must be received by TDHCA on or before 5:00 p.m. (Austin local time) Tuesday, March 1,2016. TDHCA shall not be responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to deliver the Application by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for internet connectivity problems on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

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Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

3. Completed hard copy of the 2016 Payment Receipt. Attach check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
4. Completed and fully executed 2016 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).
5. Payment – the fee for competitive Housing Tax Credit Applications is $30 per unit as represented in the Application. If a pre-application was submitted, the fee is $20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2016 Multifamily Housing Application form consists of six (6) parts. Complete all applicable parts. Those cells in which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Part 1- Administrative Tabs

- **Tab 1 – Application Certification**
- **Tab 2 – Certification of Development Owner**
- **Tab 3 – Certification of Applicant Eligibility**
- **Tab 4 – HOME Development Certification**
- **Tab 5 – Applicant Information Page**
- **Tab 6 – Self-Score (Competitive HTC Only)**

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Part 2 – Development Site

The blue colored Development Site tabs (8-15) collects all information specific to the physical location of the Development site.

- **Tab 7 – Site Information Form Part I**
    - **Part 1 – Development Address**
    - ***Part 2 – Census Tract Information***
    - ***Part 3 – Mandatory Community Assets***
    - ***Part 4 – Undesirable Area Features***
    - ***Part 5 – Resolutions***
    - ***Part 6 – Zoning and Flood Zone Designation:***
- **Tab 8 – Supporting Documentation for the Site Information Form**
    - **Street Map**
    - **Census Tract Map**
    - **Community Assets Map**
    - **Evidence of Department Preclearance of Undesirable Area Features**
    - **Resolutions**
    - **Evidence of Zoning or Re-zoning in process**
    - **Flood Zone Designation**
- **Tab 9 – Site Information Form Part II**
    - **Part 1 – Educational Excellence**
    - **Part 2 – Opportunity Index**
    - **Part 3 – Underserved Area**
    - **Part 4 – Concerted Revitalization**
    - **Part 5 – Declared Disaster Area**
    - **Part 6 – Input from Community Organizations**
    - **Part 7 – Local Government Support**
- **Tab 10 – Supporting Documentation for the Site Information Form Part II**
    - **School Attendance Zone Map and/school rating**
    - **Map of Community Assets**
    - **Evidence of Underserved area**
    - **Concerted Revitalization Plan**
    - **Letters from Community Organizations**
- **Tab 11 – Site Information Form Part III**
    - **Part 1 – Site Acreage**
    - **Part 2 – Site Control**
    - **Part 3 – 30% Increase in Eligible Basis (“Basis Boost”)**
- **Tab 12 – Supporting Documentation from Site Information Part II**
  - **Evidence of Site Control**
  - **Title Commitment or Title Policy**

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- **Site & Neighborhood Standards**

- **Tab 13 – Multiple Site Information Form**
- **Tab 14 – Elected Officials**
- **Tab 15 – Neighborhood Organizations**
- **Tab 16 – Certification of Notifications (All Programs)**

Part 3- Development Activities

- **Tab 17 – Development Narrative**
  - **Part 1 - Construction Type**
  - **Part 2 – Target Population**
  - **Part 3 – Staff Determinations**
  - **Part 4 – Narrative**
  - **Part 5 – Funding Request**
  - **Part 6 – Set-Aside**
  - **Part 7 – Previously Awarded State and Federal Funding**
  - **Part 8 – Qualified Low Income Housing Development Election**

- **Tab 18 – Development Activities Part I**
  - **Part 1 – Common Amenities**
  - **Part 2 – Unit Requirements**
  - **Part 3 – Tenant Supportive Services**
  - **Part 4 – Development Accessibility Requirements**

- **Tab 19 – Development Activities Part II**
  - **Part 1 – Size and Quality of the Units**
  - **Part 2 – Income Levels of the Tenants**
  - **Part 3 – Rent Levels of the Tenants**
  - **Part 4 – Tenant Services**
  - **Part 5 – Tenant Populations with Special Housing Needs**
  - **Part 6 – Pre-application Participation**
  - **Part 7 – Extended Affordability or Historic Preservation**
  - **Part 8 – Right of First Refusal**
  - **Part 9 – Funding Request Amount**

- **Tab 20 – Acquisition and Rehabilitation Information**
  - **Part 1 – At-Risk Set-Aside (Competitive HTC Developments applying under the At-Risk Set-Aside ONLY)**
  - **Part 2 – Existing Development Assistance on Housing Rehabilitation Activities**
  - **Part 3 – Lead Based Paint (HOME Applications Only)**

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- **Tab 21 – Occupied Rehabilitation Developments**

- **Tab 22 – Architectural Drawings**

- **Tab 23 – Specifications and Building/Unit Configuration**

Part 4- Development Financing

- **Tab 24 – Rent Schedule**
- **Tab 25 – Utility Allowances**
- **Tab 26 – Annual Operating Expenses**
- **Tab 27 – 15 Year Pro Forma**
- **Tab 28 – Offsite Costs Breakdown**
- **Tab 29 – Site Work Costs Breakdown**

- **Tab 30 – Development Cost Schedule**
- **Tab 31 – Financing Narrative and Summary of Sources and Uses**
- **Tab 32 – Financial Capacity and Construction Oversight (HOME Applications only)**
- **Tab 33 – Matching Funds (HOME Applications only)**
- **Tab 34 – Finance Scoring (competitive HTC Applications only)**
  - **Part 1 – Commitment of Development Funding by Local Political Subdivision (LPS) (§11.9(d)(2))**
  - **Part 2 – Financial Feasibility (§11.9(e)(1))**
  - **Part 3 – Leveraging of Private, State, and Federal Resources (§11.9(e)(4)**

- **Tab 35 – Supporting Documentation**

Part 5 – Development Organization

The Development Organization tabs are colored green, and include all information regarding the Development Team members. The Organizational Charts, Previous Participation exhibits, and Credit Limit documents are all located in this section.

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- **Tab 36 – Sponsor Characteristics**
  - **Part 1 – Qualified Non-Profit**
  - **Part 2 – Qualified HUB**

- **Tab 37 – Applicant and Developer Ownership Charts**

- **Tab 38 – List of Organizations and Principals**

- **Tab 39 – Previous Participation Form**

- **Tab 40 – Nonprofit Participation**

- **Tab 41 – Nonprofit Supporting Documentation**

- **Tab 42 – Development Team Members**

- **Tab 43 – HOME Management Plan Certification (HOME/National HTF Applicants only)**

- **Tab 44 – Architect Certification**

- **Tab 45 –Experience Certificate**

- **Tab 46 – 9% Applicant Credit Limit Documentation and Certification**

Part 6 – Third Party Reports

All third party reports must be submitted in their entirety by the deadline. Incomplete reports may result in termination of the application. Reports should be submitted in a searchable electronic copy in the format of a single file containing all of the required information and conform to Subchapter D of the Uniform Multifamily Rules. Exhibits should be clearly bookmarked.

- **Tab 47 – Third Party Reports**

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HOME/CHDO Information

Application Delivery Instructions

To be updated upon release of a 2016 NOFA

HOME Program Information

To be updated upon release of a 2016 NOFA

CHDO Overview

To be updated upon release of a 2016 NOFA

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Supplemental Information

Requests for Waiver and Staff Determinations

The Department will accept requests for waivers and staff determinations at any time during the Application Acceptance Period. These requests can be submitted separately from the application or with the pre-application or full application submission. Requests WILL NOT be accepted after full application submission. Requests should be submitted directly to the appropriate staff below and when possible submitted electronically, either directly through email attachment or on a disc. Hard copies will be accepted in cases where the requests include information that cannot be reasonably converted into electronic form.

For Competitive 9% HTC Applications, (currently vacant), for 4% HTC/Bond Applications, Teresa Morales at teresa.morales@tdhca.state.tx.us, or for HOME Applications, Andrew Sinnott at andrew.sinnott@tdhca.state.tx.us.

Requests for waivers are appropriate when an Applicant violates a rule and/or proposes a development that violates a rule, and as such they must be specific to an actual proposed Development (or Application). They should include an explanation as to how the circumstances surrounding the request are out of the applicant's control and how, if such waiver is not granted, the Department would not fulfill some specific requirements of law. Applicants should familiarize themselves with §10.207(a) of the Uniform Multifamily Rules and are encouraged to contact staff to discuss the request before submission.

Requests for staff determinations should be submitted in cases where certain definitions or terms do not fully account for activities proposed in an application. For example, if an applicant proposes a scattered site development that involves different census tracts that would score differently on the Opportunity Index, that applicant may request a staff determination prior to application submission in order to ascertain how staff will apply the rule and ultimately award points. Similarly, an applicant proposing a combination of rehabilitation and adaptive reuse may request a staff determination as to how to classify the activity. Applicants should familiarize themselves with §10.3(b) of the Uniform Multifamily Rules.

Public Viewing of Pre-Applications and Applications

The Department will allow the public to view any Pre-Applications or Applications that have been submitted to the Department in an electronic format. These electronic versions will be available within approximately two weeks of the close of the Application Acceptance Period. An Applicant may request via an open records request an electronic copy between the hours of 8:00 a.m. and 5:00 p.m. (Austin local time) Monday through Friday. There may be an associated cost with requesting this information.

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Applicable Rules and Reference Materials

2016 SITE DEMOGRAPHIC CHARACTERISTICS REPORT

2016 UNIFORM MULTIFAMILY RULES

2016 QUALIFIED ALLOCATION PLAN

TEXAS GOVERNMENT CODE CHAPTER 2306

INTERNAL REVENUE CODE SECTION 42

TEXAS GOVERNMENT CODE CHAPTER 1372

NOTICES OF FUNDING AVAILABILITY (NOFA)

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7d

BOARD ACTION REQUEST

REAL ESTATE ANALYSIS DIVISION

NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and an order adopting new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs and

WHEREAS, at the September 11, 2015, Board meeting the proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy and proposed new 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, were approved for publication in the *Texas Register* for public comment, and the public comment period has ended

NOW, therefore, it is hereby

RESOLVED, that the referenced repeal and new rules are hereby adopted and the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adoption of the repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and the adoption of new 10 TAC Chapter 10, Subchapter D concerning Underwriting and Loan Policy, in the forms presented to this meeting, to be published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

On September 11, 2015, the Department's Governing Board approved the proposed repeal and new Underwriting and Loan Policy rules for publication in the Texas Register and public comment.

On September 25, 2015, the repeal and proposed 2016 rules were published in the *Texas Register*. Upon publication, an official public comment period commenced on September 25, 2015, and ended on October 15, 2015.

In addition to publishing the proposed new rule in the *Texas Register*, a copy was made available on the Department's web site. Public comment on the proposed rule was taken at both the September 3rd and

September 11th Board meetings. Twelve commenters provided written comments regarding the proposed new rule, and their comments are addressed in the Reasoned Response.

In keeping with the requirements of the Administrative Procedures Act staff has reviewed the comments received and is providing a reasoned response to each comment herein. As part of each response, staff also provides a recommendation as to accepting the comment or not accepting the comment.

Attachment A: Preamble, Reasoned Response and Repeal of 10 TAC, Chapter 10, Subchapter D, concerning 2015 Underwriting and Loan Policy.

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307 concerning 2015 Underwriting and Loan Policy without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6395).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed adoption of the new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307 concerning 2016 Underwriting and Loan Policy. The purpose of the repeal is to allow for the rewrite of portions of the rule.

The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed repeal affects no other code, article or statute.

§10.301. General Provisions.
§10.302. Underwriting Rules and Guidelines.
§10.303. Market Analysis Rules and Guidelines.
§10.304. Appraisal Rules and Guidelines.
§10.305. Environmental Site Assessment Rules and Guidelines.
§10.306. Property Condition Assessment Guidelines.
§10.307. Direct Loan Requirements.

Attachment B: Preamble, Reasoned Response and New 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter D, §§10.301 – 10.307, Underwriting and Loan Policy

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307, concerning Underwriting and Loan Policy, with changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6395).

REASONED JUSTIFICATION FOR THE RULE: The proposed new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307, concerning Underwriting and Loan Policy was published concurrently with the proposed repeal of the same section. The new rule clarifies language that was previously potentially causing uncertainty and will ensure accurate processing of underwriting activities and communicate the underwriting analysis and recommendations for funding or award by the Department more effectively.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the new sections were accepted at a public hearing and in writing and by facsimile. Written comments were received from: (1) Robbye Meyer, Arx Advantage; (2) Diana McIver, DMA Development Company; (3) R.L. "Bobby" Bowling IV, Tropicana Building II; (4) Texas Coalition of Affordable Developers (TX-CAD); (5) Donna Rickenbacker, Marque Real Estate Consultants; (6) Madhouse Development Services; (7) Sara Reidy, Casa Linda Development Corporation; (8) Barry J. Palmer, Coats | Rose; (9) Janine Sisak, Texas Affiliation of Affordable Housing Providers; (10) Terry Anderson, Anderson Development & Construction; (11) Valerie A. Williams, Bank of America; and, (12) Darrell G. Jack, Apartment MarketData.

1. §10.302(d)(1)(A)(i) Market Rents (1), (2), (3), (4), (5), (6), (7), (9), (10), (12)

COMMENT SUMMARY: Commenter (12) supports the proposed rule change. Commenters (1), (2), (6) and (10) propose a change to the staff proposed rule by increasing the maximum market rent assumption from Net Program Rent to Gross Program Rent. Commenter (7) also proposes to change the maximum market rent assumption from Net Program Rent to Gross Program Rent or alternatively set a fixed dollar amount above the 60% rents for each unit type. Commenters (2) and (10) provided additional language to the proposed rule change that would allow the Underwriter to use market rents up to 30% higher than Gross Program Rents if the applicant provides a market study commissioned by the investor. The recommended revisions by commenters (2) and (10) include the following:

> **"(i)** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study."

Commenters (3), (4), (5), and (9) oppose the proposed rule change. Commenter (3) states that the Department already has wide latitude on determining market rents. Commenter (4) suggests that the market analyst is providing the most accurate information. Commenters (5) and (9) state that the rule should not use a one size fits all approach.

STAFF RESPONSE:

Staff continues to believe that in general developments with few market rate units in most markets will have difficulty achieving large market rate premiums over the 60% AMI rents. As a result and to limit the risk associated with not achieving the higher market rents (particularly those developments that depend on these premiums for feasibility), the rule proposes that for developments proposed with 15% or fewer market or unrestricted units, the rents for the market rate units will be capped at the maximum 60% rent level for analysis purposes. Staff agrees with commenters (1), (2), (6), and (10) that the suggested change from Net Program Rents to Gross Program Rents provides a reasonable level of rent premium. Additionally, staff supports the additional language proposed by commenters (2) and (10) as an option for Applicants to provide investor evaluation of market rents and support for higher rents. The staff proposed language is:

> **"(i)** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an

investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions."

2. §10.302(d)(4)(D)(iv) DCR for Direct Loans (4), (9), (10)

COMMENT SUMMARY: Commenter (4) requests that the Department provide information in the rule regarding loan terms and underwriting requirements. They further request consistency in the underwriting standards such that modifications to the loan terms not increase the deferred developer fee above the maximum percentage of deferral due to points claimed for financial feasibility. Commenter also states that any change to the Department's loan terms be acceptable to the first lien mortgage lender and equity provider given their own underwriting criteria and evaluation. The commenter proposed revisions to §10.302(d)(4)(D)(ii) through (iv) are:

> "ii) If the DCR is greater than the maximum allowable at initial underwriting, the recommendations of the Report may be based on an assumed increase to debt service and/or the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (IV) of this clause subject to a Direct Loan NOFA and program rules. If the Applicant received points within the application for Leveraging of Private, State and Federal Resources, then the adjustments made by the underwriter shall not result in a Deferred Developer Fee or more than 50%:
>
> (I) reclassification of Department funded grants to reflect loans with the following terms:
> a. "x" interest rate (0-3%)
> b. "x" loan term (30 years or co-terminus with the first mortgage if required by first mortgage lender)
> c. "x" payment term (soft or hard pay, annual pymt);
>
> (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans as long as such decrease in the amortization period is acceptable to the first mortgage lender and equity syndicator;
>
> (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph as long as such increase in the permanent loan amount is acceptable to the first mortgage lender and equity syndicator
>
> (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.
>
> (iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan. An acceptable DCR on the Direct Loan is between a 1.10 and 1.35 at initial underwriting."

Commenter (9) requests that language revert back to 2015 and wants clarity as to why the rule change is proposed and better understand the purpose. Commenter (10) suggests that the underwriter may limit total debt service that is senior to a Direct Loan where a Direct Loan is the only subsidy in the proposed sources.

STAFF RESPONSE:

The proposed staff changes to §10.302(d)(4)(D)(i), (ii) and (iii) are clarifying in nature and represent current practice. The changes formalize that terms and conditions indicated in a NOFA or program rules will override these provisions. The changes also provide clarity with respect to how the the gap methodology relates to this provision.

Commenter (4) suggested language in (ii) regarding deferred developer fee and its relationship to a scoring item is more appropriately addressed in §11.9(e)(4) relating to Leveraging of Private, State and Federal Resources. Thus, no changes are recommended in this section.

Staff agrees that loan parameters and terms should be known by Applicants at Application. The items suggested in (ii)(I)(a) through (c) are already addressed in the Direct Loan Policy found in §10.307 Direct Loan Requirements. These requirements are subject to the terms and conditions of a NOFA or program rules.

The staff proposed change to §10.302(d)(4)(D)(iv) relates to sizing the amount of debt service that is senior to a Direct Loan. The terms and conditions of a Direct Loan are made at initial underwriting and subject to change should terms and conditions of any other source of funds or uses change. This is a condition of every underwriting report.

In the closing package for a Direct Loan, Applicants submit the final capitalization structure information including the terms and conditions of senior debt, equity and any other source of funds. Material changes (most notably increased senior debt amount or debt service) could negatively impact the Department's loan as underwritten at Application. These changes could potentially increase repayment risk and thus potentially the Department's liability to HUD.

Generally by the time the closing package is submitted for review by the Department, the senior lender and equity provider have completed their underwriting and are ready to close. This rule change provides some certainty for the Developer by indicating up front at underwriting the amount of acceptable debt service senior to the Direct Loan. This approach allows for changes to the capitalization structure specifically the senior debt amount, interest rate, amortization period and other loan terms. By sizing the payment only and not the other terms of the senior debt, the other finance participants know what to expect as they are structuring their terms. Staff does not recommend lowering the minimum acceptable debt coverage to 1.10 as it increases the Department's risk on the Direct Loans (particularly those funded with HOME funds).

With respect to §10.302(d)(4)(D)(ii)(I) and (II), these provisions describe a tax credit and loan sizing process. Except for the senior debt service amount, the Department does not set terms for any senior lender or equity provider.

Staff does not recommend any changes to the proposed rule in these sections.

3. §10.302(e)(7)(A) Developer Fee (3), (8)

COMMENT SUMMARY: Commenter (3) opposes the proposed rule change stating that this rule change provides a benefit to only public housing authorities and is unfair to private sector developers. Commenter also states that developments with higher debt levels are subject to much greater risk to the Developer as public housing authorities are converting public housing under the HUD Rental Assistance Demonstration ("RAD") program. The commenter proposes the following addition to the rule change to allow riskier, high-debt transactions to benefit from the same preferred treatment as PHA/RAD transaction:

> "(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee. For Developments with at least $25,000 per Unit in conventional debt that will not come from an Affiliate of the Developer or Applicant, nor from a Related Party of the Developer or Applicant, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee."

Commenter (8) supports the staff proposed rule change for increased developer fee on transactions using the HUD Rental Assistance Demonstration ("RAD") program on tax-exempt mortgage revenue bonds.

STAFF RESPONSE:

Staff evaluated the complexity of converting public housing under the HUD Rental Assistance Demonstration ("RAD") program and layering RAD with tax-exempt mortgage revenue bonds. The Real Estate Analysis division has underwritten RAD transactions with bonds and understands the complexity. The RAD program is a new HUD program whereby guidance and program requirements are changing and evolving. Staff believes that the overhead and resources required of housing authorities to participate in the program represent additional Developer Services above those defined in rule. While an argument has been raised that the RAD program creates greater risk for housing authorities, Staff is not recommending this change due to that argument. Staff recommendation relates to the additional scope of Developer Services required.

Staff does not recommend any changes to the proposed rule in this section.

4. §10.302(e)(7)(C)(ii) Developer Fee (8)

COMMENT SUMMARY: Commenter (8) recommends deletion of this rule which states that no Developer Fee attributable to an identity of interest acquisition of the Development will be included in eligible basis. Commenter's request would allow for eligible Developer Fee on the acquisition of property already owned by a Related Party with an acquisition price based on an appraisal. Commenter further provides as an alternative of this deletion to allow transactions in which public housing authorities sponsor rehabilitation of existing developments be an exception to the existing rule.

STAFF RESPONSE:

Current rule does not allow Developer Fee to be paid on Related Party acquisition transactions and staff disagrees with the suggested change. Developer Fee is paid for a scope of work defined as Developer Services. There is no relationship between the amount of Developer Fee earned to the value or sales price of a property. Developer Services include activity such as site selection, sale contract negotiations and due diligence on the property. Because there is no site selection process or negotiation with a Third Party seller, the overall acquisition aspects of Developer Services on Related Party transactions are reduced. Staff has not found evidence that the "relationship between buyer and seller rarely serves to significantly reduce the complexities of the development process."

Staff does not recommend any changes to the proposed rule in this section.

5. §10.302(e)(7)(F) Developer Fee (1), (3), (4), (5), (9)

COMMENT SUMMARY: Commenter (1) requests removal of the proposed language until further discussion with stakeholders occurs. Commenter (3) proposes a reasonable increase in developer fee of up to 15% if cost increases were justified beyond Developer control demonstrated at cost certification. Commenters (4) and (5) also oppose the proposed change stating that increased cost causes increases risk, higher level of guarantees and reduced margins. They also state that since the Developer Fee is the transaction's contingency, limiting this buffer only serves to make a deal weaker financially. Commenter (9) opposes the change saying that higher construction costs require more work for the developer by having to value-engineer the development to reduce costs.

STAFF RESPONSE:

Staff continues to believe that Developer Fee should be paid solely for the scope of work under Developer Services. Additional work caused by the lack of up-front due diligence should not warrant additional compensation. As proposed in the rule, staff recognizes that there are many circumstances outside the control of the Developer regardless of the up-front due diligence performed. Construction and soft costs are subject to market changes. City development processes and requirements can cause increased cost that could not have been seen by the Developer. To some extent, these circumstances may affect the scope of work that must be performed by a Developer and this additional scope should not limit an increased fee. However, staff does not believe that additional fee should be paid when a lack of pre-application due diligence results in increased costs.

Deferral of Developer Fee is a source of funds as a component of the finance mechanism. Deferral of the fee also provides contingency should cost overruns exceed stated contingency. But those factors should have no relevance to sizing of a fee. Increasing the total budget for a higher fee to then be deferred is counter intuitive.

The allowance of additional Developer Fee on an Application has an impact on other Applicants in that more tax credits are being used to compensate Developers in the fashion. For this reason, staff desires to explore mechanisms such as this to prevent this impact. At this time however, staff recommends removing the suggested language from the rule to allow for further discussion with stakeholders about how to address this issue in future rules. The staff proposed language has been removed.

~~(F) The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

6. §10.302(d)(2)(H)(ii) Expenses (10)

COMMENT SUMMARY: Commenter (10) opposes new proposed language in §10.204(14)(C) relating to the required documentation that must be included in the Application if the Applicant is seeking a property tax exemption or using a PILOT agreement. Because the current proposed language in §10.204(14)(C) is consistent with language in **10.302(d)(2)(H)(ii)**, a staff response relating to this section is provided here.

Commenter opposes the staff proposed language that would require an Applicant indicating a property tax exemption or PILOT agreement in the Application to provide an attorney statement and documentation supporting the exemption. The commenter states that the Department should recognize state law and not require a non-profit to incur an additional $5K to $10K for an opinion.

STAFF RESPONSE:

Staff agrees that documentation supporting a property tax exempt or a PILOT agreement should be required only if the Applicant receives a Commitment Notice. As a result, staff proposes the following change to the proposed rule:

(ii) If the Applicant proposes a property tax exemption or a PILOT agreement, the ~~Application~~ Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion to clarify how such matters will likely be addressed, such documentation may be required prior to Commitment if deemed necessary. ~~include an attorney statement and documentation supporting the amount, basis for qualification and the reasonableness of achieving the exemption under the Property Tax Code. A Proposed Payment In Lieu Of Tax ("PILOT") agreement must be documented as being reasonably achievable.~~

Subchapter D – Underwriting and Loan Policy

§10.301. General Provisions.

(a) **Purpose.** This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)] includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A – E and G).

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

(1) **Program Limit Method.** For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) **Gap Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards

described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) **The Amount Requested**. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) **Operating Feasibility**. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) **Rental Income**. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Underwriter will review Utility allowances calculated for individually metered tenant paid utilities considered to reflect a tenant's actual consumption. Methodologies for calculating Utility allowances can be found in Subchapter F, §10.614. The Underwriter generally uses the most current Public Housing Authority ("PHA") utility allowance schedule. Should HUD issue guidance requiring a different methodology for Direct Loan Programs, that methodology will be followed.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) **Miscellaneous Income**. All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) **Vacancy and Collection Loss**. The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) **Effective Gross Income ("EGI")**. EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) **Expenses.** In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan . Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) **General and Administrative Expense** ("G&A")--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) **Management Fee**. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.

(C) **Payroll Expense.** Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) **Repairs and Maintenance Expense.** Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) **Utilities Expense.** Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) **Water, Sewer, and Trash Expense** ("WST"). Includes all water, sewer and trash expenses paid by the Development.

(G) **Insurance Expense.** Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.

(ii) If the Applicant proposes a property tax exemption or PILOT agreement the ~~Application~~Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.~~include an attorney statement and documentation supporting the amount, basis for qualification and the reasonableness of achieving the exemption under the Property Tax Code . A Proposed Payment In Lieu Of Tax ("PILOT") agreement must be documented as being reasonably achievable.~~

(I) Replacement **Reserves.** Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs).The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Property Condition Assessment ("PCA"). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) **Other Operating Expenses.** The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Tenant Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) **Total Operating Expenses.** The total of expense items described above. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) **Net Operating Income ("NOI")**. The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) **Debt Coverage Ratio**. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) **Interest Rate**. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) **Amortization Period**. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) **Repayment Period.** For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) **Acceptable Debt Coverage Ratio Range**. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;

(II) a reclassification of Direct Loans to reflect grants,

(III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed

financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) reclassification of Department funded grants to reflect loans;

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;

(III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.

(5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma using the following:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) **Total Housing Development Costs**. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) **Excess Land Acquisition**. In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) **Identity of Interest Acquisitions.**

(i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Eligible Basis on Acquisition of Buildings**. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated eligible building acquisition cost;

(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) **Building Costs**.

(A) **New Construction and Reconstruction**. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) **Rehabilitation and Adaptive Reuse**.

(i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) **Contingency.** Total contingency, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost.

(6) **General Contractor Fee**. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) **Developer Fee.**

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) **Financing Costs**. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.

(9) **Reserves**. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (including transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) **Soft Costs**. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

(f) **Development Team Capacity and Development Plan.**

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) **-** (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;

(B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation

made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) **Other Underwriting Considerations.** The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) **Floodplains**. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
 (A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or
 (B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
 (C) the Development must be proposed to be designed to comply with the QAP, or NOFA.

(2) **Proximity to Other Developments**. The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:
 (A) **Operating Income**. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;
 (B) **Operating Expenses**. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;
 (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
 (D) **Total Housing Development Costs**. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development**. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the

recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) **Gross Capture Rate and Individual Unit Capture Rate**. The method for determining capture rates for a Development is defined in §10.303of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:
  (A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
  (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
  (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
  (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or,
  (E) has an Individual Unit Capture Rate for any Unit Type greater than 100 percent.
  (F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
    (i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
    (ii) Existing Housing. The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) **Deferred Developer Fee**. Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) **Pro Forma Rent**. The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.

(4) **Initial Feasibility**.
  (A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
  (B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) **Long Term Feasibility**. The Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects a Debt Coverage Ratio below 1.15 or negative cash flow at any time during years two through fifteen.

(6) **Exceptions**. The infeasibility conclusions may be excepted when:
  (A) Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
  (B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.
    (i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.
    (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
    (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.
    (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) **General Provision**. A Market Analysis 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 analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained**. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications**. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
   (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
   (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
   (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
   (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
   (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
   (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

   An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
   (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.
   (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(d) **Market Analysis Contents**. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) **Title Page**. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
(2) **Letter of Transmittal**. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
(3) **Table of Contents**. Number the exhibits included with the report for easy reference.
(4) **Market Analysis Summary**. Include the Department's Market Analysis Summary exhibit.
(5) **Assumptions and Limiting Conditions**. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
(6) **Identification of the Property**. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
(7) **Statement of Ownership**. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
(8) **Secondary Market Area**. A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
  (A) The SMA will be defined by the Market Analyst with:
    (i) size based on a base year population of no more than 250,000 people inclusive of the PMA; and
    (ii) boundaries based on U.S. census tracts.
  (B) The Market Analyst's definition of the SMA must include:
    (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
    (ii) a complete demographic report for the defined SMA; and
    (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical orderwith labels as well as the location of the subject Development and all comparable Developments.
(9) **Primary Market Area**. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
  (A) The PMA will be defined by the Market Analyst as:
    (i) size based on a base year population of no more than 100,000 people;
    (ii) boundaries based on U.S. census tracts; and
    (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.
  (B) The Market Analyst's definition of the PMA must include:
    (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;
    (ii) a complete demographic report for the defined PMA; and
    (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical orderwith labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA.
  (C) **Comparable Units**. Identify Developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets

with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:

(i) development name;
(ii) address;
(iii) year of construction and year of Rehabilitation, if applicable;
(iv) property condition;
(v) Target Population;
(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
(I) monthly rent and Utility Allowance; or
(II) sales price with terms, marketing period and date of sale;
(vii) description of concessions;
(viii) list of unit amenities;
(ix) utility structure;
(x) list of common amenities;
(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,
(xii) for rental developments only, the occupancy and turnover.

(10) **Market Information**.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
(i) total housing;
(ii) rental developments (all multi-family);
(iii) Affordable housing;
(iv) Comparable Units;
(v) Unstabilized Comparable Units; and
(vi) proposed Comparable Units.

(B) **Occupancy**. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
(i) number of Bedrooms;
(ii) quality of construction (class);
(iii) Target Population; and
(iv) Comparable Units.

(C) **Absorption**. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) **Demographic Reports**.
(i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
(iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) **Demand**. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
(i) **Demographics**. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in

subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

- (I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
- (II) Target. If applicable, adjust the household projections for the Qualified Elderly targeted by the proposed Development.
- (III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
- (IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
  - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for Qualified Elderly households; and
  - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
- (V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) **Gross Demand**. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(iii) **Potential Demand**. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

- (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
- (II) For Developments targeting the general population:
  - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
  - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
  - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
- (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
  - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
  - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
  - (-c-) Gross Demand includes both renter and owner households.
- (IV) For Qualified Elderly Developments or Supportive Housing:
  - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
  - (-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) **Demand from Secondary Market Area:**

- (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
- (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
- (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) **Demand from Other Sources:**

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
(-a-) documentation of the number of vouchers administered by the local Housing Authority; and
(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) **Employment**. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.

(11) **Conclusions**. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) **Unit Mix**. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.

(B) **Rents**. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
(i) The Department recommends use of HUD Form 92273.
(ii) A minimum of three developments must be represented on each attribute adjustment matrix.
(iii) Adjustments for concessions must be included, if applicable.
(iv) Adjustments for proximity to employment centers and services narrated in the Comparable Unit description must be included.
(v) Total adjustments in excess of 15 percent must be supported with additional narrative.
(vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) **Effective Gross Income**. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) **Demand:**
(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) **Relevant Supply**. The Relevant Supply of proposed and unstabilized Comparable Units includes:
(i) the proposed subject Units;
(ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) **Gross Capture Rate**. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. [Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.]

(H) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(I) **Absorption**. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) **Market Impact**. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) **Photographs**. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) **Appendices**. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

(a) **General Provision**. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained**. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications**. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents**. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) **Title Page**. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(2) **Letter of Transmittal**. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including

the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) **Table of Contents**. Number the exhibits included with the report for easy reference.

(4) **Disclosure of Competency**. Include appraiser's qualifications, detailing education and experience.

(5) **Statement of Ownership of the Subject Property**. Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) **Property Rights Appraised**. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) **Site/Improvement Description**. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) **Physical Site Characteristics**. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.

(B) **Floodplain**. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) **Zoning**. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) **Description of Improvements**. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) **Environmental Hazards**. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) **Highest and Best Use**. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price,

date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.
(II) Financing terms.
(III) Conditions of sale.
(IV) Location.
(V) Highest and best use.
(VI) Physical characteristics (e.g., topography, size, shape, etc.).
(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) **Sales Comparison Approach**. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) **Income Approach**. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) **Market Rent Estimate/Comparable Rental Analysis**. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) **Comparison of Market Rent to Contract Rent**. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) **Vacancy/Collection Loss**. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) **Expense Analysis**. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published

survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) **Capitalization**. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) **Direct Capitalization**. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) **Value Estimates**. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value" inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) **Marketing Time**. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards 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 ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the

report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
(2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
(3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
(4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
(5) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements;
(6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
(7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) 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 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 Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners 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.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§10.306. Property Condition Assessment Guidelines.

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

(1) **Useful Life Estimates**. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) **Code Compliance**. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;

(3) **Program Rules**. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements as outlined in Chapter 1 of this title, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant may claim points;

(4) **Reconciliation of Scope of Work and Costs.** The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and

(5) **Cost Estimates for Repair and Replacement**. It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

  (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

  (B) **Proposed Repair, Replacement, or New Construction**. If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

  (C) **Expected Repair and Replacement Over Time**. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will

also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;
(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
(4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

(1) the interest rate may be as low as zero percent provided all applicable NOFA and program requirements are met as well as requirements in this subchapter;
(2) unless structured only as an interim construction or bridge loan and provided all NOFA and program requirements are met, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.
(3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;
(4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,
(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:
    (A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or
    (B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:

(1) Construction must begin no later than six (6) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;
(2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
(3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and
(4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

Comment 1.

Arx Advantage, LLC
Robbye G. Meyer
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Austin, Texas 78748
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robbyemeyer@gmail.com

October 15, 2015

Texas Department of Housing and Community Affairs
Attention: Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Ms. Morales:

We appreciate the opportunity to provide comment to the Uniform Multifamily Rules, Qualified Allocation Plan and Real Estate Analysis Rules.

§10.101(a)(2) Mandatory Community Assets
We support TAAHP's recommendation for churches/religious institutions to be added back to the list of Mandatory Community Assets.

These organizations provide many services that the tenants we serve need and use. It makes logical sense that these organizations be included as Community Assets.

§10.101(b)(5) Common Amenities, §10.101(b)(6) Unit Requirements, and §10.101(b)(7) Tenant Services
We Support TAAHP's recommendation to request the timeframe for these items to be returned to the Section 42 fifteen (15) year Compliance Period instead of the Extended Use Period as the current language in the draft rules is requiring.

§11.9(b)(2) Sponsor Characteristics
We believe at this point in time, this point category has not been evaluated enough to be appropriately implemented. Developers/Applicants do not know what compliance category will apply to them; therefore, they will not know what score to attach to this criteria.

An alternative recommendation would be to put this as a placeholder for the 2017 QAP and allow the Developers/Applicants to go through the process in the 2016 cycle without the score actually being counted. This will at least give Developers/Applicants a potential look at what will happen in 2017 and this can be better evaluated for 2017.

§11.9(c)(6)(F) & (G) Underserved Area
While we applaud the Department for trying to find more ways to spread out points and accepting suggestions to accomplish this goal, both of these new additions to the underserved area cause concern. The Department needs to state a clear reliable third party source that will be acceptable for obtaining this data. We do not believe a letter

from a city/county official is appropriate and can be subjective and a strong case for challenges/administrative review. For (G) specifically, will this be ACS data, if so, which ACS data source.

§11.9(c)(7)(A) Tenant Populations with Special Housing Needs
We support the Department's efforts to encourage participation and expedite the allocation of the 811 Program Funds; however, we do not support awarding points to applications that are not in eligible areas. This scoring item eliminates many developers in the state that have existing portfolios in non-811 eligible MSA areas, along with new developers to the program and to the state of Texas.

As an alternative, the 811 program can be made as a threshold requirement for 4% tax credit applications submitted to the Department for developments proposed in 811 eligible MSAs. Our recommendation is for 10% of the total units in a qualified development.

§11.9(e)(2) Cost of Development per Square Foot
We support TAAHP's recommendation for this point category.

§10.302(d)(1)(A)(i) Market Rents
Recommend language change: For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI.

10.302(e)(7)(F) Developer Fee
Although we understand what the Department is trying to curtail with these new restrictions, we believe there needs to be more discussion with all stakeholders (developers, investors, lenders, etc.…) before a final determination is made. This change affects the overall deal as a whole and not just the developer pocket book.

HB 3311 Parity of Senior Housing
When reading the actual language in the statute and applying the formula according to the literary language, it appears clear that the statute is directed at the sub-regions. Since the At-Risk set aside does not differentiate between regions and sub-regions or rural and urban, it should be clear that the At-Risk set aside should not be included in the formula for the percentage of senior housing in Texas.

We appreciate the opportunity to participate in the discussion. If we can be of additional assistance, please let us know.

Sincerely,
Robbye G. Meyer

Comment 2.

DEVELOPMENT COMPANY, LLC

October 15, 2015

Mr. Brent Stewart
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Subchapter D – Underwriting and Loan Policy

Dear Brent:

Please accept this public comment from DMA Development Company, LLC, which specifically recommends specific language change to the following section:

Section 10.302(d) Operating Feasibility

(A) Rental Income

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study.

Please note that the justification for this change is that this new provision would render infeasible large bond deals in certain urban markets, not only in Austin, but in certain submarkets in Regions 3 and 6.

Please do not hesitate to contact me with any questions about these comments. I can be reached at 512-328-3232 ext. 4504.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC

Diana McIver
President

4101 PARKSTONE HEIGHTS DRIVE SUITE 310 AUSTIN, TEXAS 78746
TEL: 512.328.3232 WWW.DMACOMPANIES.COM FAX: 512.328.4584

Comment 3.

TROPICANA BUILDING II, LLC
4655 COHEN AVE., EL PASO, TX 79924
(915) 821-3550

October 14, 2015

Kathryn Saar and Tom Gouris
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2016 QAP AND PROPOSED 2016 UNDERWRITNG RULES

Dear Kathryn and Tom,

We offer the following comment on the published 2016 Draft QAP:

1. **Tenant Populations with Special Housing Needs—11.9(b)(2):**

We support a methodology whereby tax credit developers with experience and a track record of excellence in compliance is rewarded. The 2015 QAP offers a *PENALTY* for developers with a bad track record, however, the action of an excellent performer is treated the same as a developer that has *ABSOLUTELY NO TRACK RECORD* of performance at all in the tax credit industry. This TDHCA policy of ignoring good performance runs completely contradictory to the private sector, as an excellent record of performance is the most important factor private lenders and investors consider in evaluating a proposed development. It is time TDHCA properly take into account this crucial evaluation factor and use points to incentivize good behavior. However, we believe the current proposal in the draft QAP still does not properly address the problem, as the proposed point category again only penalizes bad behavior and puts experienced developers with excellent track records in the same boat as developer with no record of performance whatsoever in the complex world of tax credit development. We propose the following language change to this point item:

Previous Participation Compliance History (up to 2 points):

(i) *The portfolio of the Applicant has a compliance history of a category 1 as determined in accordance with 10TAC 1.301, related to Previous Participation (2 points), or*

(ii) *The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10TAC 1.301, related to Previous Participation (1 point)*

The definition of the term "Applicant" in the rules allows for a partnership with an experienced developer for a developer without a track record who seeks to receive the point item. This is common practice in the private sector world—if an entity has *NO EXPERIENCE* in apartment development, a private sector bank or investor would look long and hard before approving a proposal from that entity (probably to a much greater extent than 1 or 2 points in 100-point evaluation matrix) and would likely suggest some type of joint venture or partnership with an entity that not only has experience, but a good track record. The point item as we propose it brings TDHCA evaluation in line with the private sector world of finance, which has become extremely difficult to navigate through since the 2008 financial crisis.

2. **Criteria to serve and support Texans most in need—11.9(c)(7)**

We understand and support the Department's efforts to place 811 units in existing portfolios due to time concerns with placed-in-service deadlines and other risks of relying primarily on proposed developments to place 811 units. We support language giving a minimal 1 point incentive to developers willing and able to place 811 tenants in qualifying existing units. We also support other incentives, such as increasing developer fees to 20% or shortening extended use periods by 5 years as proposed by TAAHP to accomplish this Department goal as well.

We offer the following comments regarding the published 2016 Draft of Subchapter C—Underwriting and Loan Policy:

1. **Designation as Rural or Urban—10.204(5)(B):**

We support this proposed language. It is well thought-out and in accordance with statute. We appreciate staff's research into this item and its invitation for feedback during the 2015 roundtable process.

We offer the following comments regarding the published 2016 Draft of Subchapter D—Underwriting and Loan Policy:

1. **<u>Market Rents—10.302(d)(1)(A)(i):</u>**

We understand the Department's concern with trying to underwrite market rents in low-income developments, as the "stigma" associated with low-income units can affect the amount of rent charged on market units in the same development. However, our private sector underwriters are currently using a 10% increase over 60% AMFI rents in developments we have recently been awarded. We feel that this is a reasonable assumption, and we have been able to achieve those rents thus far in our 2 mixed-income awards from 2013 that have recently been placed in service (North Desert Palms and Verde Palms). Granted, each of those deals have over 34% market units, but in the El Paso market, where we work exclusively, the low-income units do not carry the same "stigma" as is possibly seen in other markets. We propose that the Department look to the private sector lender and syndicator community for guidance in this area for each market, as markets in Texas can vary greatly due to differences in what is going on with each local economy. The Department has wide latitude to accept or reject market rents as proposed in applications as per the current rules, hence, we oppose any rule change to this category.

2. **<u>Developer Fee—10.302(e)(7)(A):</u>**

We understand, through various roundtables held by Department staff, that this rule change is precipitated by the notion that Public Housing Authority ("PHA") Rental Assistance Demonstration ("RAD") projects are at a much greater risk of obtaining funding, due to the uncertainty of the financing. In the same line of reasoning, Developments with higher debt are also of a much greater risk to the Developer. Further, a rule that changes the playing field to benefit <u>ONLY PHAs</u> is unfair to private sector developers. Hence, we propose the following rule change to bring riskier, high-debt deals into the same preferred treatment as PHA/RAD deals:

> *For Developments with at least $25,000 per Unit in conventional debt that will not come from an Affiliate of the Developer or Applicant, nor from a Related Party of the Developer or Applicant, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.*

3. **<u>Developer Fee—10.302(e)(7)(F):</u>**

We understand the Department's concern regarding "rewarding" a developer who greatly underestimated costs at the time of application. However, in the development world, cost increases on items beyond a developers control are commonplace. Things such as impact fees and permit fees are constantly

inflated well-beyond the cost of inflation by local governments and while some of us go to great lengths to fight these fees, it is still well beyond our control. Likewise the costs of goods and services can be greatly influenced by things such as construction in China or OPEC actions regarding the world oil market as recent history has shown us. **We propose a reasonable increase in developer fee of up to 15%** if it can be proven at cost certification that such a cost increase was justified and beyond the Developer's control**Developer Fee—10.302(**

We offer the following comments regarding the published 2016 Draft of Subchapter E—Post Award and Asset Management Requirements:

1. **Cost certification—10.402(j):**

We do not understand the reasoning behind changing the requirement of a 15-year pro-forma to a 30-year pro-forma and **we strongly oppose this change.** There is no reasoning given in the Department's presentation in the Board book as with other changes in this section, nor any discussion of this proposed major change during any of the 2015 roundtable discussions. Thus, we hope that the insertion of 30 years is possibly a typo. Our company had a long debate before the TDHCA Board over this issue back in 2006 on our Mission Palms development, at which time the Board decided unanimously that a 30-year pro-forma was not reasonable to use for a variety of reasons (i.e., non-HUD financing typically has either a 15 or 18 year term, so the debt must be refinanced at that time anyway on the vast majority of 9% tax credit deals, so the debt structure will change at that time anyway). In a low-income, low rent area like El Paso and the rest of the Texas border, pro-forma rent projections beyond year 15 often create a situation where operating expenses have increased to the point of a DCR of below 1.15 and creates an unfair situation for border developments—a concern that if realized, would be addressed by the private sector lender and developer during a year 15 or year 18 refinancing. However, if the Department wishes to impose this new standard on TDHCA-financed or HUD financed developments ONLY then we are not opposed.

This concludes our comments for the 2016 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV
President

Comment 4.

TX-CAD 2016 Underwriting Rules Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2016 Underwriting Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

1. **Section 10.302(d)(1)(A)(i) Market Rents.**

   We do not believe that a one size fits all approach to the determination of market rents is good policy for underwriting purposes. The Market Analyst is providing the most current information in the Market Study regarding what actual market rents are being achieved in the each market area. We believe that the rents in the pro forma should reflect the most accurate information possible.

   Proposed language change below:

   (A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

   (i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. ~~*For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.*~~

2. **Section 10.302(d)(4)(iv) DCR for Direct Loans.**

   In order to provide clarity related to underwriting of direct loans, it is requested that the agency provide the following information in terms of how direct loans will be underwritten, including the anticipated interest rate, loan term, payment type/frequency and acceptable DCR's for these second mortgages. Further, since the application provides points for financial feasibility

including a maximum percentage of deferred developer fee, we ask for consistency in the underwriting standards such that modifications to the loan terms not increase the deferred developer fee above that maximum. Any recommended changes to the first mortgage loan amount, interest rate, term, and/or amortization period should be acceptable to the first mortgage lender and equity provider given their own underwriting criteria and evaluation.

Proposed language change below:

ii) If the DCR is greater than the maximum allowable at initial underwriting, the recommendations of the Report may be based on an assumed increase to debt service and/or the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (IV) of this clause subject to a Direct Loan NOFA and program rules. If the Applicant received points within the application for Leveraging of Private, State and Federal Resources, then the adjustments made by the underwriter shall not result in a Deferred Developer Fee or more than 50%:

(I) reclassification of Department funded grants to reflect loans with the following terms:

a. ”x” interest rate (0-3%)

b. “x” loan term (30 years or co-terminus with the first mortgage if required by first mortgage lender)

c. ”x” payment term (soft or hard pay, annual pymt);

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans as long as such decrease in the amortization period is acceptable to the first mortgage lender and equity syndicator;

(III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph as long as such increase in the permanent loan amount is acceptable to the first mortgage lender and equity syndicator

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan. An acceptable DCR on the Direct Loan is between a 1.10 and 1.35 at initial underwriting

3. Section 10.302(e)(7)(F) Developer Fee:

We respectfully disagree with the concept of setting developer fee at Application. With increased cost, comes increased risk, increased guarantees, and reduced margins. The developer

fee is the deal's contingency and limiting this buffer only serves to make a deal weaker financially. Because applications are submitted almost a year in advance to breaking ground, it makes little sense to penalize the developer for market forces that they cannot control. Furthermore, given the limited time frame from publication of rules to submission of an application it is not feasible or reasonable to expect a developer to fully understand all of the potential challenges, issues, and difficulties a deal may encounter during its life cycle. The IRS and TDHCA rules set out what is a proper incentive for developers to produce affordable housing and we do not believe it is in the best interest of the program to artificially limit the fee at the time of application.

Because of this we recommend deletion of the language below in its entirety:

~~(F)The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

Comment 5.

MARQUE REAL ESTATE CONSULTANTS
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Donna@MarqueConsultants.com

October 15, 2015

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: Draft 2016 Qualified Allocation Plan and Multifamily Rule Comments

Dear Mr. Irvine,

Thank you to you and your staff for your continued efforts to dialogue with the stakeholders related to the staff drafts of the 2016 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). Please accept the following comments on behalf of Marque Real Estate Consultants (MREC). Comments 1, 3, 5-8, 10, 13, 15, 16, and 18 mirror comments made by the group TX-CAD and comments 2, 3, 8, 10-17 mirror comments made by TAAHP.

1. **QAP, §11.7(3) Tie Breaker Factors**
   MREC suggests a change to the third tie breaker in order to add clarity to how the tie breakers will be applied across deal types. As written, it is unclear how a tie between multiple applications representing general population and elderly developments would be treated under §11.7(3). Therefore, we suggest that the third tie breaker apply to all developments, not only general population developments. Suggested language:

   (3) ~~For competing Applications for Developments that will serve the general population, t~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

2. **QAP, §11.7(4) Tie Breaker Factors**
   Additionally, MREC suggests a revision to the fourth tie breaker to evaluate the distance of proposed developments to the nearest existing tax credit development serving the same population type. Suggested language:

   (4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

3. **QAP, §11.9(c)(4) Opportunity Index**

Currently an index 1 score of 77 is being used as the standard for elementary schools to meet the definition of a high opportunity area. In previous years this was the statewide median for both elementary schools and all schools combined. This year, the elementary school median index 1 score has dropped to 76. We believe that because this scoring item is directly tied to elementary schools, that the statewide median elementary school index 1 score of 76 should be used. Suggested language:

(A) For Developments located in an Urban Area…

(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (5 points);

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement.

4. **QAP, §11.9(c)(5) Educational Excellence**

As stated above related to Opportunity Index, data released by the Texas Education Agency (TEA) in 2015 shows that the statewide elementary school index 1 score has decreased to 76. We think it is appropriate to use an index 1 score of 76 for Opportunity Index. Additionally, MREC thinks it is most logical to have a single index 1 score for elementary schools across scoring criteria, which is why we are suggesting that the change in elementary school index 1 score flow through to Educational Excellence. We are not suggesting a change to the index 1 score used for middle or high schools. Suggested language:

(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the

middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

5. **QAP, §11.9(c)(6)(C) Underserved Area (Never received an allocation)**
In an effort to ensure that communities have the opportunity to have a broad range of populations served, we believe that this scoring item should only take into account developments of the same type. Proposed language change below:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

6. **QAP, §11.9(c)(6)(F) Underserved Area (Employment Growth)**
While we support the concept, we cannot support the language as written. Any proof associated with this item needs to be completely objective and available to the public at large therefore we recommend removing this scoring criteria.

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point);~~

7. **QAP, §11.9(c)(6)(G) Underserved Area (Population Growth)**
Accurate demographic information related to the growth at the census tract level does not exist. We believe that growth at the Place level is a more appropriate indication of growth of a community as a whole. Proposed language change below:

(G) A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years. ~~provided the census tract does not comprise more than 50% of the county.~~ .

8. **QAP, §11.9(c)(7)(A) Tenant Populations with Special Needs**
A new category within this scoring item provides the highest level of points to those Applicants who commit units to the 811 program within an existing property. While we understand that TDHCA is seeking to place 811 units quickly, the result of this new scoring category is to give a competitive advantage within the current application round based on a factor unrelated to the development being proposed within the current application. We believe this new item will have the effect of discriminating against developers solely on the basis of the siting of previous developments – those who have specialized in rural, senior, or smaller MSAs would not be eligible for these points. It gives an advantage to certain developers, not for merit, but luck of the draw for having built previously in specific urban areas.

The Department can instead offer incentives outside of the application cycle to encourage participation in the 811 program for existing portfolios. Because of this we recommend deletion of the language in its entirety:

~~(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

9. **QAP, §11.9(d)(7)(A) Concerted Revitalization Plan**

We have concerns about the subjectivity of language in the rule and feel that more specificity of what is required and will be approved would be helpful. Additionally, in order to support the revitalization efforts of larger cities we are suggesting that a city be allowed to designate more than one development as significantly contributing to revitalization. We suggest the following changes:

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an ~~distinct~~ area that ~~was once vital and has lapsed into a situation requiring~~ has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~ adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan ~~that~~ should meet~~s~~ the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been i~~n~~dentified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of ~~violent~~ crime~~, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances~~ or overt illegal activities; and/or

(-c) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.

(III) Staff will review the ~~target area for presence of the problems identified in the~~ plan ~~and~~ for targeted efforts within the plan to address ~~those~~ the problems identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;
(-b-) developing health care facilities;
(-c-) providing public transportation;
(-d-) developing significant recreational facilities; and/or
(-e-) improving under-performing schools.
However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have~~ identify sufficient and~~,~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission.~~ been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official ~~providing documentation of measurable improvements within the~~ certifying the identified revitalization area, that the development is located within the revitalization area, and that the plan meets the requirements of subsections I, II and IV of this section;~~ based on the target efforts outline in the plan;~~ and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing ~~most~~ significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may ~~only~~ identify no more than three ~~one single~~ Developments during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at preapplication). If multiple Applications submit resolutions under this subclause from the same Governing Body, then not more than three ~~none~~ of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing ~~most~~ significantly to concerted revitalization efforts.

10. **QAP, §11.9(e)(2) Cost of Development Per Foot**
Construction costs have increased significantly over the last three years and we request that the cost per foot figures be increased by $10 per square foot to reflect these increases.

11. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iii) Undesirable Neighborhood Characteristics**
The additional criteria to evaluate blight is too subjective to administer in a consistent way. Additionally, this criteria may result in the ineligibility of sites in high opportunity areas or revitalization areas that are rapidly improving simply due to the presence of a de minimis number of blighted structures. Therefore we recommend the deletion of this language in its entirety:

~~(iii) The Development Site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.~~

12. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iv) Undesirable Neighborhood Characteristics**
Certain school districts in the larger urban areas will struggle to meet the new TEA threshold standards, because they are indeed new standards. As a result, this section will redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff. Therefore we suggest a deletion of this language in its entirety:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

13. **Multifamily Rules, Subchapter B, §10.101(b)(4) Mandatory Development Amenities**
We request that central air not be required for acquisition/rehabilitation properties where the units currently operate with PTACs. Modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and reasonable ceiling height. Suggested language change:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation); and

14. **Multifamily Rules, Subchapter B, §10.101(b)(5) Common Amenities, §10.101(b)(6)(B) Unit and Development Features, and §10.101(b)(7) Tenant Supportive Services**
Proposed 2016 language requires program participants' obligations past the compliance period. This is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff. Therefore, we request that the timeframe under each of these sections be restored to the compliance period rather than the extended use period.

15. **Multifamily Rules, Subchapter D, §10.302(d)(1)(A)(i) Market Rents**
We recommend a deletion of the new language which limits underwritten market rents to the 60% AMI Net Program Rent. This new policy is a one size fits all approach to a problem observed by the REA Division in a limited scope, and this type of uniform limitation does not appropriately evaluate developments across the state. Therefore, we suggest that TDHCA rely upon the market study it requires applicants to have prepared. Suggested language is as follows:

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. ~~For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.~~

16. **Multifamily Rules, Subchapter D, §10.302(e)(7)(F) Developer Fee**
We respectfully disagree with the concept of fixing developer fee at a specific amount at the time of Application. With increased cost, comes increased risk, increased guarantees, and reduced margins. The developer fee is the deal's contingency and limiting this buffer only serves to make a deal weaker financially. Because applications are submitted almost a year in advance to breaking ground, it makes little sense to penalize the developer for market forces that they cannot control. Furthermore, given the limited time frame from publication of rules to submission of an application it is not feasible or reasonable to expect a developer to fully understand all of the potential challenges, issues, and difficulties a deal may encounter during its life cycle. The IRS and TDHCA rules set out what is a proper incentive for developers to produce affordable housing and we do not believe it is in the best interest of the program to artificially limit the fee at the time of application. Because of this we recommend deletion of the language below in its entirety:

~~(F) The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

17. **Multifamily Rules, Subchapter E, §10.402(j)(3)(B)(xxiv)**
    We requests that this revert to 2015 requirement for a 15 year pro forma instead of proposed 30 year pro forma for consistency with the application requirements, and past TDHCA policy at cost certification.

18. **Multifamily Rules, Subchapter E, §10.405(4)(H) Amendments and Extensions**
    Language was added to the rules that would require an Applicant to get an amendment if there are significant increases in development costs or changes in financing.

    We oppose the language for three reasons: 1) With no precise definition of "significant" an Applicant would have no way to determine if an amendment is required; 2) Development is a fluid process and changes in the market, code interpretations, and site development issues can all cause increases at any time before or after closing. Having to get an amendment prior to closing will serve to delay closings and put the deal in greater jeopardy. Having to go back for an amendment after closing for something that cannot be addressed, changed, or fixed by the Department adds additional paperwork and effort that serves no meaningful purpose; 3) The Developer, Lender, and Syndicator are responsible for determining the feasibility of a deal after award. Together they take the best information available and make the decision to proceed or not. Post construction, the lender and/or syndicator enforce review and approvals of all changes either of a single dollar amount or a cumulative dollar amount thereby providing sufficient oversight to the cost of the development. Since tax credits are capped upon award, there is not risk to the department for these additional costs or financing changes. Because of this we recommend deletion of the language below in its entirety:

    ~~(H) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required;~~

We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2016 Qualified Allocation Plan and Multifamily Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker
Marque Real Estate Consultants

Cc: Tom Gouris, TDHCA
Marni Holloway, TDHCA
Teresa Morales, TDHCA

Comment 6.

Pam,

Thank you for giving us the opportunity to comment on the 2016 Underwriting Rules. Please find our comments below.

Market Rents:

While we appreciate staffs attempt to standardize the underwriting policy we feel capping market units at 60% Net Program Rents is too restrictive. We suggest using the lesser of Gross Program Rents or Market Rents as determined by the Market Analyst.

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(512) 914-0953

(512) 900-2860
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www.madhousedevelopment.net

Comment 7.

VIA EMAIL

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701-2410

Re: Public Comment to 2016 Draft Qualified Allocation Plan and Multifamily Rules

Dear Mr. Irvine,

We submit the following recommendations as proposed changes to the 2016 Draft Qualified Allocation Plan and Multifamily Rules:

2016 Draft Qualified Allocation Plan

§11.9(c)(6)(E) - Underserved Area - A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point)

-Change language to A Place, or if outside of the boundaries of any Place, a County that currently does not have more than one (1) competitive tax credit allocation or a 4 percent non-competitive tax credit allocation awarded prior to 2001 (15 years) (1 point).

Section 11.9(c)(6)(E) in the 2016 Draft QAP Draft current language allows an applicant to receive one point for a development in a **census tract** that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population within the past 10 years. This rule by definition awards one point for a census tract that has an **existing** tax credit development. This puts a Development in a Census Tract with no existing tax credits at a one point disadvantage. Please refer to Attachment A. The Census Tracts identified have existing tax credit properties awarded in 1994, 1998 and 2001. These census tracts would have a one point advantage to the surrounding census tracts that have none. This does not appear to meet the spirit of the definition of Underserved Area.

11.9(c)(6)(F)-Underserved Area - Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point)

-Delete this point item in its entirety.

Section 11.9(c)(6)(F) language is too broad, leaves too much interpretation to Staff and the area (5 miles) is too large. What will developers provide as a definitive source for the information? We reviewed all prior public comment and did not see any suggestions as to required support. We also feel this language in §11.9(c)(6)(F) is better suited for Community Revitalization criteria once there is a consensus on definitive support material .

2010 Kessler Parkway, Dallas TX 75208
214-941-0089

11.9(c)(6)(G)-Underserved Area - A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point)

-Delete this point item in its entirety

Section 11.9(c)(6)(F) language is terribly confusing and leaves too much interpretation to Staff. What will developers provide as a definitive source for the information? We reviewed all prior public comment and did not see any suggestions as to required support.

§11.9(c)(7)(A) - Tenant Populations with Special Housing Needs - Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

1. Delete §11.9(c)(7)(A) in its entirety to prevent an unfair statewide advantage for those developers whose portfolios include Section 811 PRA Program eligible inventory; or
2. §11.9(c)(7)(A) should be limited to no more than two (2) points rather than three (3) points, in order to provide statewide fairness to all developers.

Section 11.9(c)(7)(A) in the 2016 QAP Draft aims to award developers three (3) points if they have existing developments in their portfolios that can participate in the Section 811 PRA Program. By rule, these developments can only be located in the 7 large urban Metropolitan Statistical Area (MSAs). For developers that were fortunate enough to have previously developed in these locations, this creates unfair leverage for scoring purposes, particularly against all other developers in the state who are not fortunate enough to have existing 811 PRA Program eligible inventory in these markets.

According to Staff this rule allows developers with 811 Program eligible inventory to apply in regions outside of the 7 large urban MSAs and receive 3 points for committing Section 811 eligible units. This automatically puts developers with 811 Program eligible inventory at a huge advantage over those developers without eligible inventory. We also understand that while the rule is silent, Applicants can solicit Owners/Developers with 811 eligible inventory. This allows owners with 811 Program eligible inventory to sell their units to an Applicant applying in the current round. This simply is not good practice.

While we understand that §11.9(c)(7)(A) is being proposed to get more participation in the 811 PRA Program, we have never seen a proposed rule which benefits only those who were fortunate enough to have developed in certain areas of the State.

We offer the following alternatives to increase the number of 811 Eligible Units from other programs offered by TDHCA:

1. Place a threshold requirement on non-competitive 4% tax credit applications. Most of these transactions are awarded in the 7 large MSAs. We recommend a tiered approach: <100 Units - (10) 811 Units, 100-200 Units - (20) 811 Units, >200 Units - (30) 811 Units.

2. Propose a NOFA to Owners of 811 Eligible Properties in the entire TDHCA Portfolio a TCAP grant of $150K for committing (15) 811 Eligible Units. This can be limited to a certain number of developments.

Multifamily Rules

Subchapter D - Underwriting and Loan Policy

10.302(d)(1)(A)(1) - Market Rents - For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.

We disagree with the suggested proposed language. We confirmed with Staff the Net Program Rent suggested is net of the utility allowance. This rule discourages Applicants to provide mixed income properties. We recommend using the 60% gross rent or a set amount above the 60% rent for each unit type i.e. $65 increase for a one bedroom, $90 for a two bedroom and $115 for a three bedroom. This will create a consistency across the board for underwriting.

Thank you in advance for your consideration. Please contact me at sreidy@ess-email.com or 214-941-0089 if should have any questions or need further clarification.

Sincerely,

Sara Reidy
Casa Linda Development Corporation

THURSDAY, OCTOBER 15, 2015

HUD.GOV

U.S. Department of Housing and Urban Development
Secretary Julián Castro

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QUALIFIED CENSUS TRACTS

The 2015 Qualified Census Tracts (QCTs) are effective January 1, 2015. The 2015 designation uses data from the 2010 Decennial Census and three releases of 5-year tabulations from the American Community Survey (ACS): 2006-2010; 2007-2011; and 2007-2012. The revised designation methodology using three years of ACS data is explained in the Federal Register notice published October 3, 2014 (http://www.huduser.gov/portal/Datasets/QCT/DDA2015_Notice.pdf).

harlingen, tx Go | Select a State | Select a County | Go

Map Options : Clear | Reset

QCT Legend: Tract Outline | Qualified Census Tracts (2014 Only) | Qualified Census Tracts (2015 Only) | Qualified Census Tracts (2014 & 2015) | LIHTC Project

QCT Options

14 Current Zoom Level

- Show Tracts Outline (Zoom 11+)
- Show LIHTC Projects (Zoom 11+)
- Color Qualified Tracts (Zoom 7+)

Second Adams - MF - 1994

Highland Gardens - MF - 2001

Sundance - MF 1998

107.00 | 108.00 | 109.00 | 111.00 | 112.00 | 113.01 | 113.02 | 114.00 | 117.00 | 118.01 | 118.02 | 121.01

Harlingen

Google | Map data | Report a map error

Comment 8.

A Professional Corporation

BARRY J. PALMER

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(713) 890-3944

October 14, 2015

Email: Pamela.Cloyde@tdhca.state.tx.us

Texas Department of Housing and Community Affairs
Attn: Pam Cloyde
P.O. Box 13941
Austin, Texas 78711-3941

RE: Comments on Draft 2016 Uniform Multifamily Rules – Subchapter D.

Dear Pam:

Please accept these comments to the Draft 2016 Uniform Multifamily Rules – Subchapter D:

Section 10.302(e)(7)(A) – We support the Staff's revision permitting public housing authority developments converting under the HUD Rental Assistance Demonstration ("RAD") Program and financed using tax-exempt mortgage revenue bonds to have a developer fee not to exceed 20% of eligible cost less developer fee.

Section 10.302(e)(7)(C)(ii) – We recommend deletion of this subsection denying developer fee attributable to acquisition credits in an identity of interest acquisition. A third party appraisal is required in identity of interest transactions, so there is an arm's length determination of the value of the improvements to support any claim made for tax credits. The fact that the development was acquired from a related party should be overcome by the evidence of the appraisal, and the relationship between seller and buyer rarely serves to significantly reduce the complexities of the development process. In the alternative, we recommend that transactions in which housing authorities sponsor rehabilitation of existing developments be an exception to this provision. Where a housing authority redevelops existing public housing, the time-consuming element of dealing with HUD to obtain consents necessary for the rehabilitation and financing are a significant factor, and the developer should be compensated for that effort.

Thank you for the opportunity to provide our comments on the draft Subchapter D. If you have any questions concerning our suggestions, please do not hesitate to call.

Very truly yours,

Barry J. Palmer TAD

Barry J. Palmer

Comment 9.

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

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Mark-Dana Corporation

MARK MAYFIELD
Texas Housing Foundation

JANINE SISAK
JSA Development Company, LLC

CHRIS THOMAS
CohnReznick LLP

RON WILLIAMS
Southeast Texas Housing Finance Corporation

Executive Director
FRANK JACKSON

October 13, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2016 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP), the Underwriting and Loan Policy, and the Post Award and Asset Management Requirements that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on October 1, 2015 in response to the rules approved for public comment by the TDHCA Governing Board on September 11, 2015.

Please note that while the following recommendations are numerous due to the large and diverse membership, there are several issues that generated significant amount of discussion among the TAAHP membership. I highlight those three issues here, in an effort to emphasize their importance to our membership and encourage TDHCA staff to give them serious consideration.

1. Reducing concentration. Under the current rules, applicants are often competing for sites within the same census tracts, which often results in developers paying a premium for land that is not necessarily the best real estate in terms of connectivity to amenities and services. Adding concepts like "same type development" to the tie breaker and to the underserved point category and adding more tiering in terms of educational excellence are efforts to open up new census tracts to the competition.
2. Clarifying the competitive process. There are several new concepts in the QAP that are very vague in terms of how they will be applied. One example is the new category in the underserved point category for job growth. Another example is the new point category for applicants depending on whether the portfolios are characterized as either Category 1, 2, 3 or 4. There is a great deal of confusion as to which categories apply and the TAAHP membership requests clear guidance in order to make informed decisions in terms of the competition.
3. The Section 811 Program. TAAHP is opposed to the new one point advantage for placing Section 811 voucher holders in existing properties. We understand that TDHCA wants to house 811 voucher holders as soon as possible, but this provision reduces program participants' flexibility in doing so and, as drafted, only benefit a handful of program participants. As an example, one TAAHP member

with more than 25 properties with approximately 2,000 units has only one existing property that would qualify. Under this new rule, this applicant is now forced for point reasons to reserve this property for the 2016 round instead of using it to house the 811 voucher holders as committed under the 2015 rules. This result is the exact opposite of what TDHCA is trying to achieve. Please note that TAAHP has formed a sub-committee that has come up with alternative incentives for TDHCA staff to consider. We will be submitting those recommendations under separate cover.

With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter A – Definitions

Section 10.3(47) Elderly Development

TAAHP requests further clarification on why these new definitions are necessary.

Justification: There is general concern amongst the membership about the new Elderly Development Definition because most cities and other government funders are very sensitive to these definitions. An effort to further define these terms might lead to greater conflicts between programs.

Section 10.3 Placed in Service

TAAHP requests that a definition of Placed in Service be added and that the definition be consistent with the Internal Revenue Code Section 42 provision, which allows a building to be counted as "Placed In Service" if only one unit in the building has received a certificate of occupancy. TAAHP also requests the TDHCA's carryover documentation be changed so that the language regarding Placed in Service is consistent with the Internal Revenue Code.

Justification: TDHCA's policy on placed in service should be consistent with the federal regulation.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2)(c) Mandatory Community Assets

TAAHP requests that churches or places of religious worship be reinstated as a Mandatory Community Asset.

Justification: Churches are a public service to the surrounding communities. These institutions not only provide support for the spiritual and emotional needs and health of its members in the community, but also provide a myriad of supportive public services to the community. Such services include day care, meals on wheels, counseling, food pantries, immigration and free legal clinics, seminars on health and finances and emergency funds for items such as rent, utilities, medical expenses or car repairs.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(4)(B) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section regarding incidents of violent crime:

TAAHP
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tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com."

Justification: Because neighborhoodscout.com provides inconsistent results, applicants should have the option of obtaining statistics directly from the police department. In those cases where obtaining statistics directly from the police department is difficult, neighborhoodscout.com can serve as the source. This either/or approach provides much needed flexibility for the applicant in obtaining the relevant information.

TAAHP also requests that TAAHP requests that the following section regarding blighted structures be deleted:

~~(iii) The Development Site is located within 1,000 feet of any census tract of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism, that they would commonly be regarded as blighted or abandoned.~~

Justification: This concept of "blight" is too subjective to administer in a consistent way.

TAAHP also requests that this subparagraph regarding schools that have not Met Standard be deleted:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

Justification: Because certain school districts in the larger urban areas struggle to meet the new standards, because they are indeed new standards, this section serves to redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff.

Section 10.101(a)(4)(E) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section:

(iii) The Development is ~~necessary to enable a state, a participating jurisdiction or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD-approved Conciliation Agreement, or a final and non-appealable court order~~ consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the city's or county's HUD consolidated plan.

Justification: Larger cities, like the City of Houston, will not legally be able to provide letters stating that "the Development is necessary to comply with its obligation to affirmatively further fair housing." This statement is too broad and too open to legal interpretation. Instead, cities will be more comfortable confirming compliance with their planning documents.

Section 10.101(a)(5) Common Amenities, Section 10.101(6) Unit Requirements, Section 10.101(7) Tenant Services

TAAHP request that the timeframe be restored to Compliance Period instead of Extended Use Period.

Justification: Extending program participants' obligations in these respects past the compliance period is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff.

Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests the following changes to this section:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation)

Justification: Modern PTAC units are energy and cost efficient, and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.204(14) Non-Profit Ownership

TAAHP requests deletion of the following paragraph:

~~(C) For all Application. Any Applicant proposing a Development with a property tax exemption must include an attorney statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code. A proposed Payment in Lieu of Tax ("PILOT" agreement must be documented as being reasonably achieved."~~

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tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

Justification: This adds unnecessary costs to the preparation of an application. Applicants relying on a property tax exemption should do so at their own risk.

Qualified Allocation Plan

Section 11.4(b) Maximum Request Limit

TAAHP requests a new limit for USDA applications of $750,000.

Justification: Most USDA developments are small so a $750,000 cap is appropriate.

Section 11.4(c) Tax Credit Requests and Award Limits

TAAHP requests the following paragraph 2 be deleted in its entirety:

(2) ~~The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMR's) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax Exempt Bond Developments, as a general rule, an SADDA designative would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicant must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.~~

Justification: The Internal Revenue Code allows the 30% boost in DDAs designation to be extended up to 365 days by allowing a project that applied for a bond reservation in one year to close the transaction in the next year. Section 11.4(c)(2) grants the 30% tax credit boost only when the bond reservation certificate is received in the same year as the HUD SADDA designation, which is subject to change annually. The housing site may no longer be included in a SADDA in the year following receipt of the private activity bond allocation reservation. The proposed rule will also force closing 4% bond transactions that access the increase amount of private activity bond allocation after the mid-August housing bond collapse by the end of the calendar year, unduly reducing the already very short 150 day closing timeframe.

Section 11.7 Tie Breaker Factors

TAAHP recommends the following changes to paragraph 4:

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type ~~a development~~. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) *Sponsor Characteristics. Previous Participation Compliance History*

While no consensus was reached on whether this point item should remain in the QAP, there was consensus on needing clarifying language and direction from TDHCA's asset management and compliance division regarding how an applicant determines which category applies. Additionally, this point category should be tied to the category of an applicant as of March 1, 2016, so that there

is clarity within the competitive round in terms of scoring.

(c) Criteria to service and support Texans most in need

(4)(A)(ii) *Opportunity Index*

TAAHP requests that any instance of "77 or greater on index 1" change to "76 or greater on index 1."

Justification: The 2015 data released by TEA indicate the median Index 1 score for elementary to be 76 as opposed to the 2014 data which indicated median Index 1 score for elementary to be 77.

TAAHP also request that the poverty rate for opportunity index be increased to 20% for all areas outside of Region 11 where the poverty rate should stay at 35%.

Justification: This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunity" which will promote further de-concentration of awards. These new census tracts are still first and second quartile census tracts and in many cases have highly rated schools and are closer to services and town centers. This change also helps alleviate the issue that residents living in preservation properties are part of the poverty rate, making their own communities uncompetitive.

(4)(B) *Opportunity Index for Rural*

TAAHP recommends the following to be added to subsection (i) as further clarification on what "services specific to a senior population" might entail:

- Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site);
- Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primary care doctor's offices that accept Medicaid/Medicare, ERs and Hospitals.

(5) Educational Excellence

TAAHP recommends a third scoring tier for educational excellence:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school either all with a Met Standard rating or any one of the three schools with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points);

Justification: This is one area where TAAHP would like to see more point variation. Because it is very difficult to find sites where all three schools have an Index 1 score of at least 77, it would create more variation in scoring if there were other ways to receive partial points.

(6) Underserved Area

TAAHP members had differing opinions on this point category, although members reached consensus on the following language changes to subparagraphs (C),(D), and (E):

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development (2 points);
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development serving the same Target Population (2 points);
(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a Development that~~ which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);

Additionally, TAAHP requests more direction from staff about what would be required in terms of documentation for subsection (F) of this point category. Additionally, TAAHP proposes some language to this paragraph to include leased spaces in addition to newly construction space:

Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and or additional) office space and undergone initial hiring of its workforce . . . .

(7) Tenant Populations with Special Housing Needs

TAAHP requests that the new paragraph A that gives extra points for placing 811 residents in existing units be deleted:

~~Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the~~

~~proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

Justification: A large percentage of developers, even the more established Texas developers with large portfolios, will not qualify for this point creating an unfair competitive advantage for only a handful of developers with a disproportionate number of general population deals.

(8) Aging in Place

TAAHP recommends the following language in lieu of the language in the published rules.

An Application for an Elderly Development may qualify to receive up to three (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):

a. "Walk-in" showers of at least 30" x 60" in at least 50% of all residential bathrooms;
b. 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;
c. Chair height (17 – 19") toilets in all bathrooms; and
d. A continuous handrail on at least one side of all interior corridors in excess of five feet in length.

(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 point):

i. A minimum of 16 hours per week for Developments of 80 units or less;
ii. A minimum of 24 hours per week for Developments of 81 to 120 units; and
iii. A minimum of 32 hours per week for Developments in excess of 121 Units.

9) Proximity to Important Services

TAAHP requests that the radius for rural deals be expanded to 3 miles.

Justification: Residents of tax credit housing in rural areas are reliant on their cars and often services like this are on the outskirts of town, near more major roadways.

(d) Criteria promoting community support and engagement

(5) Legislative Letters

TAAHP requests that positive letters of support from state representations receive +4 points, neutral letters receive 0 points, and letters of opposition will receive -4 points.

Justification: The total point range for these letters will be 8 points, rather than the current 16 point range, thereby making this point range of 8 consistent with the legislative intent of ranking it the lowest point category under the statute.

(7) Concerted Revitalization Plan.

TAAHP requests that this entire section revert back to the 2015 language.

Justification: This re-written section in the current draft is a concern with regard to its high level of subjectivity, especially with specific regard to the requirement that the problems identified have to be "sufficiently mitigated and addressed prior to the Development being placed in service." The current language will only benefit neighborhoods that are at the tail end of the revitalization efforts.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

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(2) *Cost of Development per Square Foot*

TAAHP requests that the cost per square foot limitations in this section should be increased by at least $10 per square foot.

Justification: The current draft does not adjust upward for recent construction cost increases which have been in the range of 8% to 12% per annum for the last three years.

TAAHP also requests the following language change:

(E)(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the development is considered a High Cost Development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

Subchapter D – Underwriting and Loan Policy

Section 10.302(d)(1) Operating Feasibility – Income

TAAHP requests that this provision revert to the 2105 language which allowed for market rate rents to be set by the applicant at levels supported by the market study regardless of what percentage market rate units a development had.

Justification: There is no "one size fits all" approach to rents in the various Texas markets. The large urban markets, and not only Austin, are performing very differently than the smaller rural markets, which is why market studies are so important in determining market rents.

Section 10.302(d)(4)(D)(iv) Acceptable Debt Service Coverage Ratio Range

TAAHP requests that the language in this section revert back to the 2015 language.

Justification: TAAHP members do not understand why this change is proposed and would like to better understand the purpose.

Section 10.302(e)(7)(F) Developer Fee

TAAHP request that the following section be deleted:

~~The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

JUSTIFICATION: A new provision has been added that caps the Developer Fee to the amount determined at the original underwriting. We respectfully disagree that a developer's amount of work is the same regardless of the cost of the development. When construction costs are higher than anticipated, the developer has to do considerable more work in terms of value engineering and identifying additional soft costs. Furthermore, the payment of development fee is capped by available sources, so this new rule merely limits basis, placing the developer at higher risk for basis adjusters.

Subchapter E – Post Award and Asset Management Requirements

Section 10.402(g) 10 Percent Test (Competitive HTC Only)

TAAHP requests that the last sentence of paragraph (2) be deleted:

~~The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.~~

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.
TAAHP also requests that paragraph (5) be amended to require a non-material amendment to admit guarantors that were not identified as guarantors or principals on the Org Charts submitted at the time of Application:

If identified Guarantors have changed from the Guarantors or principals identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors or ~~members~~ principals must be reviewed in accordance with Chapter 1, Subchapter C of this part.

Justification: While we agree that adding new guarantors should require a non-material amendment, such amendment should not be required when the guarantor was listed on the original application as a principal on the owner organizational chart.

Section 10.402(j) Cost Certification (Competitive and Non-Competitive HTC and related activities Only)

TAAHP requests that this revert to 2015 requirement for a 15 year proforma instead of proposed 30 year.

Justification: a 15 year proforma is consistent with the application requirements, and past TDHCA policy at cost certification.

Section 10.405(a) Amendments to HTC Application or Award Prior to LURA recording or amendments that do not result in a change to LURA

TAAHP requests reinstatement of subpart (G) permitting a de minimis increase or decrease in the site acreage without requiring Board approval.

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.

TAAHP request deletion of new subpart (H) defining the following as a material alteration requiring Board approval:

~~Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~

Justification: Increases in development costs and changes in financing occur frequently and should be handled administratively as they have been handled in the past.

Section 10.406(d)(3) and (4) Ownership Transfers, Non-Profit Organizations & HUBS

TAAHP membership appreciates the language changes in the proposed rules that provide for greater flexibility in cases where an award was not made out of the non-profit set-aside.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully. I have already reached out to Brent Stewart and Tom Gouris to set up a meeting to review the new underwriting rules and discuss possible alternatives to the problematic sections.

Thank you for your service to Texas.

Sincerely,

Janine Sisak
Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Tom Gouris – TDHCA Deputy Executive Director for Housing Programs
Patricia Murphy – TDHCA Chief of Compliance
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

Comment 10.

From:	TERRI ANDERSON
To:	Teresa Morales; Brent Stewart; Tom Gouris; Raquel Morales; Tim Irvine; Marni Holloway
Subject:	Comments to TDHCA Proposed 2016 Rules
Date:	Thursday, October 15, 2015 4:49:46 PM

Good evening,

Please see the comments below to the proposed 2016 Multifamily Rules":

1. Section 10.302(d)Operating Feasibility

(A) Rental Income

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the ~~Net~~ Gross Program Rent at 60% AMI in rural markets. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study.

1. 10.201(2)(B)(iii) – shorter closing expectations for Traditional Carryforward Tax-Exempt bonds [TDHCA should not require tighter time frames, and be more development friendly understanding it is very difficult to close bond deals in five (5) months] Suggestion: Remove language.
2. 10.204(11) – Annexation of a Development Site occurring while an Application is under review to require evidence of appropriate zoning with the Commitment or Determination Notice or provide evidence of vested rights prior to construction commencement. [Involuntary Annexation is a key indicator of Housing Discrimination and to the extent a City wants to prevent the development of affordable housing, they will use this tool to prevent the award. Vested rights and other legal vehicles are available to the Developer and do not require proper zoning.]
3. 10.302(d)(4)(D)(iv) Debt Service Coverage – The Underwriter may limit total debt service that is senior to a Direct Loan where Direct Loans are the only subsidy in the proposed uses.
4. 10.204(14)(C) – Requiring an attorney statement (essentially an opinion) supporting the amount and basis for qualifications and reasonableness of achieving property tax exemption or provide a predetermination notice from the applicable appraisal district. [The Department should recognize State Law and not require a non-profit an additional

$5-$10,000 cost burden for an opinion on a proposed development]

Thank you for the opportunity to provide public comment.

Sincerely,

Terri L. Anderson, President
Anderson Development & Construction, LLC
347 Walnut Grove Ln
Coppell, TX 75019
phone: (972) 567-4630
fax: (972) 462-8715

October 15, 2015

Mr. Tom Gouris – VIA Email
Ms. Teresa Morales – VIA Fax 800-733-5120
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: 2016 Multifamily Program Rules Proposed QAP Comment

Dear Mr. Gouris and Ms. Morales:

Bank of America Merrill Lynch has reviewed the referenced document and we would like to provide the following comments as noted below.

Section 10.302 (e) (7) (F) – Developer Fee
This section seeks to limit the developer fee to 15% of original underwriting. Bank of America is not in agreement with this clause.

We believe the developer fee is as follows:

- Incentive for qualified developers to develop properties that would not normally be developed. Time and effort in developing these types of properties is more cumbersome than a standard market rate development.
- This fee is used by lenders to balance the sources and uses; with deferral of a portion to cover unforeseen construction events and timing gaps based on equity pay-in schedules.
- Limiting the developer fee could impact the development's overall eligible basis

Recommendation for language:
Delete - **Section 10.302 (e) (7) (F) – Developer Fee**

Section 10.405 (a) (4) (H) – Amendments and Extensions
This section seeks to require staff to do a full re-evaluation and analysis should development costs or changes in financing that may affect the financial feasibility of the development or result in reductions of credit or changes in conditions.
We believe that changes to the feasiblity of the development would be handled in the following manner:

- The lender(s) and investor are monitoring to make sure the development remains financially feasible.

- The staffs of the Lender and Investor are trained to monitor changes in the development proforma, sources and uses. This provision as currently stated would burden Department Staff.
- The Lender and Investor do not want the Department's re-evaluation to cause construction delays and jeopardize placed in service requirements.

Recommendation for language:
Add language that will require a letter from the lender stating that the development will remain financially feasible.

Example Language – (H) Significant increase in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that the developer will advise, in writing, the Department Staff, and provide a Lender and or Investor (Syndicator) letter with a statement of financial feasibility.

We commend the staff in requesting public comment and all of their efforts in the transparency of the agency. Should you have any questions, please do not hesitate to contact me at 214-209-3219.

Sincerely,

Bank of America Merrill Lynch

Valerie A. Williams
Bank of America Merrill Lynch
901 Main Street, 20th Floor
Dallas, Texas 75202

Comment 11.

From:	Darrell G Jack
To:	Teresa.Morales tdhca.state.tx.us
Cc:	"Brent Stewart"
Subject:	QAP Comments
Date:	Thursday, October 15, 2015 7:17:29 PM

Teresa:

The following are my personal comments related to the proposed rule changes for the 2016 - QAP, M/F Rules and Real Estate Analysis Rules.

Capture Rate Threshold by Unit Type - Support

The proposed rule change helps to insure that there is adequate demand in the market to support a developer's proposed unit mix. Applications with an individual capture rate by unit type in excess of 100% would not demonstrate adequate demand and would be ineligible for an award of LIHTC's.

Market rate units underwritten at max. program 60% (AMI) rent limits when less than 15% of the total units have no income restrictions - Support

The proposed rule change will prevent marginal applications from using overpriced market rate units to make up rent shortfalls, thus making the project financially feasible. Based on personal research, and research by reported by HUD - Ft. Worth, market rate units in affordable projects do not typically demand a full market rent. HUD estimates that in the Texas market, market rate units achieve a max. 15% premium when located within a project with income restrictions. While there may be individual exceptions in premium locations, the vast majority of the state would be well served by this rule.

Thank you for considering my comments.

Darrell G Jack
President
Apartment MarketData, LLC

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
NOVEMBER 12, 2015

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10, Subchapter E, and directing their publication in the *Texas Register.*

RECOMMENDED ACTION

WHEREAS, at its September 2015 meeting the Board approved for publication and public comment in the *Texas Register,* the proposed repeal of 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements. The proposed repeal was published in the *Texas Register* on September 25, 2015, and

WHEREAS, at its September 2015 meeting the Board approved for publication and public comment in the *Texas Register,* proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements. The proposed new rule was published in the *Texas Register* on September 25, 2015. Public comment was accepted through October 15, 2015. Staff received comments from seven commenters and incorporated those non-substantive changes into the final rule for adoption.

Now therefore it is hereby,

RESOLVED, that the repeal of 10 TAC, Chapter 10, Subchapter E and the adoption of new 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements are hereby ordered and approved, together with the preambles presented to this meeting, for publication in the *Texas Register* and

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and an order adopting the new 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements §§10.400 – 10.408, in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Department's rules regarding Post Award and Asset Management Requirements are part of the Uniform Multifamily Rules at 10 TAC, Chapter 10. Subchapter E describes all activities that occur for multifamily developments after an award or funding decision has been made. The new rule clarifies, corrects, and adds additional information in all sections to ensure accurate processing of post award activities and more effective communication with multifamily development owners regarding their responsibilities after funding or award by the Department.

The new rule was published in the September 25, 2015, issue of the *Texas Register* to allow for public comment. The rule was also posted to the TDHCA website on the same date. A QAP and Multifamily Rules Resource meeting was held on October 9, 2015, to discuss all sections of the Uniform Multifamily Rules. The public comment period closed on October 15, 2015. Comments were received from seven commenters. Based on those comments, staff has incorporated changes into the rule proposed today for final adoption.

Attachment A includes the Preamble, Reasoned Response, and Adoption of the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements for publication in the *Texas Register*. Attachment B includes the Preamble, Reasoned Response, and Adoption of the new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements for publication in the *Texas Register*.

Attachment A: Preamble, Reasoned Response, and Repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements.

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements, without changes, as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6395).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed new 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the repeal is to allow for the adoption of the new rule.

The Department accepted public comments between September 25, 2015, and October 15, 2015. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 12, 2015.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The repeal affects no other code, article, or statute.

§10.400. Purpose.
§10.401. General Commitment or Determination Notice Requirements and Documentation.
§10.402. Housing Tax Credit and Tax Exempt Bond Developments.
§10.403. Direct Loans.
§10.404. Reserve Accounts.
§10.405. Amendments and Extensions.
§10.406. Ownership Transfers (§2306.6713).
§10.407. Right of First Refusal.
§10.408. Qualified Contract Requirements.

Attachment B the Preamble, Reasoned Response, and Adoption of the new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements for publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10, Subchapter E, §§10.400 -10.408, concerning Post Award and Asset Management Requirements. Sections 10.402, 10.405, 10.406, and 10.407 are adopted with changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6395). Sections 10.400, 10.401, 10.403, 10.404 and 10.408 are adopted without changes and will not be republished. The purpose of the changes to the sections is to clarify, correct and add information from the prior rule to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department. Post award activities include requests for action to be considered on developments awarded funding from the Department through the end of the affordability period.

REASONED JUSTIFICATION FOR THE RULE. New 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements was proposed concurrently with the proposed repeal of the same sections. The new rule clarifies language that was previously potentially causing uncertainty and will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department's response to all comments received are set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules.

Public comments were accepted through October 15, 2015, with seven comments received in writing from: (1) Cynthia Bast, Locke Lord LLP, (2) Texas Association of Affordable Housing Providers (TAAHP), (3) Tropicana Building II, LLC, (4) Texas Coalition of Affordable Developers (TX-CAD), (5) Marque Real Estate Consultants, (6) Bank of America Merrill Lynch, (7) Matt Hull, Texas Association of Community Development Corporations (TACDC)

1. §10.402 – General Comment.

COMMENT SUMMARY: Commenter 1 made several administrative suggestions such as correcting for incorrect capitalization and, wherever practical, the Department has accepted and incorporated these small administrative changes. Commenter 1 also suggested the following minor change to §10.402(c):

"(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 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. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected

in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §10.901 of this chapter."

STAFF RESPONSE: Staff agrees with the revised language as proposed.

2. §10.402(d) Documentation Submission Requirements at Commitment of Funds

COMMENT SUMMARY: Commenter 1 proposed the following revised language to increase clarity:

"(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution ~~which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents~~;"

STAFF RESPONSE: staff agrees that the rule could benefit from additional clarity and recommends the amended language below:

"(3) evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;"

COMMENT SUMMARY: General comment was received in response to a requirement within Chapter 10 Subchapter C relating to evidence of a property tax exemption. A summary of the comment received related to this item can be found in that section of the rule.

STAFF RESPONSE: While comment summary and staff response related to evidence of a property tax exemption can be found under that section of the rule, staff recommends the following clarifying addition to be included in §10.402(d) of as follows:

"(7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms."

3. §10.402(f)(3) Carryover (Competitive HTC Only)

COMMENT SUMMARY: Commenter 1 proposed revised language below related to requirements at Carryover to further clarify the Department's requirements for amendments:

"(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes in Site Control of the Development Site ~~at~~ between Application and Carryover must be ~~identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department~~ addressed in accordance with §10.405."

STAFF RESPONSE: Staff agrees with the comment that changes can be made to further clarify and recommends the following language:

"(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage ~~Site Control of the The Development Site at~~ between Application and Carryover must be ~~identical to the Development Site that was submitted at the time of Application submission~~ addressed by written explanation or, as appropriate, in accordance with §10.405 ~~or last approved by amendment as determined by the Department~~."

4. §10.402(g) 10 Percent Test (Competitive HTC Only)

COMMENT SUMMARY: Commenter 1 suggested changes to the provision in the opening paragraph of §10.402(g) concerning a later date used in the proposed Qualified Allocation Plan calendar in §11.2. The Commenter pointed out that the calendar uses a July 3rd date for the 2017 submissions.

STAFF RESPONSE: Staff suggests the following change in response to comment:

"**(g) 10 Percent Test (Competitive HTC Only).** No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, under §11.2, documentation must be submitted to the Department…"

COMMENT SUMMARY: Commenter 1 and 3 suggested changes to §10.402(g)(2). Proposed revisions from Commenter 1 are intended to address the ownership transfer and the amendment processes and provide clarity where appropriate. Commenter 3 stated that de minimis changes in sites often happen due to surveying discrepancies or unexpected related events, such as right of way adjustments. Commenter 3 also stated that such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff. Commenter 3 suggested the following language be removed:

"(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. ~~The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.~~"

Commenter 1 suggested the following language changes:

"(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. ~~The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.~~ For purposes of this paragraph, any changes in the Development Site between prior to the 10 Percent Test must be addressed in accordance with §10.405;"

STAFF RESPONSE: Staff agrees that the language can be further clarified and recommends the following change:

"(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission or ~~last approved by amendment as determined by the Department~~. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405."

Staff suggests that the change in language will allow for changes to occur by administrative or Board amendment, as appropriate under §10.405, or by sufficient justification related to de minimis measuring discrepancies as determined acceptable by the Department. Staff disagrees, in response to Commenter 3, that the rule change as proposed will require Board approval for de minimis changes. The intent of adding the language concerning amendments to the rule section was to encompass situations in which a site had been amended and therefore, would not be identical to the site submitted at the time of Application. Staff anticipates that the same process concerning material, non-material, or other explanation and resolution of minor and major acreage discrepancies will still occur.

COMMENT SUMMARY: Commenter 1 suggested the following language changes under §10.402(g)(6) to incorporate defined terms and provide more clarity regarding the Department's existing requirements related to changes in Developers and Guarantors:

"(6) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors identified ~~on the Org Charts submitted~~ at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors ~~and members~~ must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews)."

COMMENT SUMMARY: Commenter 2 stated that while it is agreed that adding new guarantors should require a non-material amendment, such amendment should not be required when the guarantor was listed on the original application as a principal on the owner organizational chart. Commenter 2 suggests the language below:

"(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or principals identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors ~~and members~~ or principals must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews)."

STAFF RESPONSE: Staff agrees with both commenters and suggests the language below to clarify:

"(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified ~~on the Org Charts submitted~~

at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors ~~and members~~ or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews)."

COMMENT SUMMARY: Commenter 1 suggested adding the following language as provision (8) under §10.402(g):

"(8) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of 10 Percent Test from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions."

STAFF RESPONSE: While staff partially agrees with the comment, staff does not recommend adding this provision in the rule at this time. A re-evaluation of a transaction for changes to the financing structure, syndication rate or amount of debt, or syndication proceeds, is already a requirement and is addressed in the Department's Credit Underwriting Analysis Report.

5. §10.402(h) Construction Status Report

COMMENT SUMMARY: Commenter 1 suggested the revised language below:

"(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors ~~or members with potential control have been added to the Guarantors and members~~ have changed from the Guarantors identified ~~on the Org Charts submitted~~ at the time of ~~Application~~ the 10 Percent Test, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors ~~and members~~ must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews);"

STAFF RESPONSE: Staff agrees with the comments made and proposes the revised language to clarify when a non-material amendment and previous participation review must take place:

"(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or ~~members with potential control have been added to the Guarantors or members identified on the Org Charts submitted~~ Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter and the new Guarantor~~s and members~~ and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);"

6. **§10.402(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities Only)**

COMMENT SUMMARY: Commenters 2, 3 and 5 oppose the change in this section requiring a 30 year operating pro forma and requests that the Department revert back to the 2015 language to require a 15 year operating pro forma consistent with the application requirements and past TDHCA policy at cost certification. Commenter 3 further comments that no reasoning was provided by the Department of changes to this section, nor was there any discussion of this proposed major change during the discussions of the proposed rules. Commenter 3 recalls a long debate before the TDHCA Board over this issue back in 2006, at which time the Board decided unanimously that a 30 year pro forma was not reasonable to use for a variety of reasons (i.e., non-HUD financing typically has either a 15 or 18 year term, so the debt must be refinanced at that time anyway on the majority of 9% tax credit deals and the debt structure will change at that time anyway). Commenter 3 states that this change would create an unfair situation for border developments where rent projections beyond year 15 creates a situation where expenses have increased to the point of a DCR below 1.15. Finally, Commenter 3 suggests that if the Department wishes to impose this new standard on TDHCA-financed or HUD-financed developments only the opposition to the provision would be removed.

STAFF RESPONSE: The Department is responsible, under Texas Government Code §2306.185 and Internal Revenue Code §42(m)(2), for reviewing and ensuring the long term affordability and feasibility of a property and that not more housing tax credits are allocated to a development than are necessary for its feasibility. Section 2306.185 specifically requires the Department to "adopt policies and procedures to ensure that…the recipient of funding maintains the affordability of the multifamily housing development for…a 30 year period…" While the application process allows for a 15 year pro forma for initial underwriting, the Department has other tools such as the expense to income ratio, to satisfy the 30 year affordability analysis required by statute. The Department believes that the process of cost certification is unique in that while initial underwriting creates estimates of a project's long term feasibility based on information presented by the Applicant, the cost certification is a review of actual costs and performance of a property once it has reached stabilization, enabling the Department to use better data to review the long-term affordability and feasibility of a property and identify any areas of concern. While an expense to income ratio analysis provides compliance with the 30 year affordability analysis at Application, this tool may not be used at cost certification. Staff believes that, though debt may be refinanced over time, a 30 year pro forma is reasonable given the 30 year or greater period over which a development is expected to maintain its affordability and feasibility under its Land Use Restriction Agreement ("LURA"). Such re-underwriting and analysis at cost certification will assist the Department in ensuring that recipients of funding are able to maintain the affordability of the housing development for the greater of the 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the existing federal government assistance as required under Texas Government Code §2306.185(c). Staff recommends no change.

7. **<u>Section 10.405 Amendments and Extensions</u>**

COMMENT SUMMARY: Commenter 2 requested reinstatement of §10.405(4)(G) which previously included the following language prior to the proposed draft:

"(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;"

The Commenter requested reinstatement of the language "without requiring Board approval" because de minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. The Commenter stated that such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.

STAFF RESPONSE: Staff disagrees with the requested change. The language was removed for two reasons: 1) The Department currently calculates changes resulting in modifications of residential density and eliminated the 10 percent change requirement because a 5 percent change in residential density will simultaneously trigger a 10 percent change in site acreage. The Department has kept only the modification to residential density requirement since this type of change requires Board approval pursuant to Texas Government Code §2306.6712; and 2) The rule previously allowed for increases or decreases of at least 10 percent other than changes required by local government; however, on review earlier this past year, the Department has determined that Texas Government Code does not contain the same provision related to changes required by local government and, therefore, such language has been removed. Staff recommends no change.

COMMENT SUMMARY: Commenters 2, 4, 5, and 6 all opposed the addition of new provision §10.405(4)(H). Commenter 2 stated that increases in development costs and changes in financing occur frequently and should be handled administratively as they have been handled in the past. Commenters 4 and 5 suggested that with no precise definition of "significant" an applicant would have no way to determine if an amendment is required, and worried that amendments would delay closings and put a deal in jeopardy. Commenters 4 and 5 also stated that since tax credits are capped upon award, there is no risk to the department for additional costs or financing changes. Commenter 6 stated that changes to feasibility should be handled by the lender(s) and investor and that the provision as currently written would burden Department staff. Commenter 6 also stated that the lender and investor do not want the Department's re-evaluation to cause construction delays and jeopardize placed in service requirements.

Commenter 4 indicated that further discussion with staff on the issue indicates that the main concern with financial changes that may impact feasibility are with regard to TDHCA Direct Loans, and suggests the following language change:

"(H) For developments with Direct Loans, if there are ~~S~~significant increases in development costs~~,~~ ~~or~~ changes in financing, circumstances that might ~~that may affect the financial feasibility of the Development or~~ result in reductions of credit or other changes in the financing conditions such that the financial feasibility of a Development could be affected, then ~~such that~~ a ~~full~~ re-evaluation and analysis by staff assigned to underwrite the application~~s~~ is required.

For all other developments, if there are significant increases in development costs, changes in financing, circumstances that might result in reduction of credit or other changes in the financing conditions such that the financial feasibility of a Development could be affected, the applicant should provide a notification to the agency along with a certification from the equity provider and/or lender certifying that the development remains financially feasible and that they intend to continue their investment in the transaction."

Commenter 6, rather than simple deletion, requested that the Department add language that will require a letter from a lender stating that the development will remain financially feasible and provided the following suggested language:

"(H) Significant increase in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that the developer will advise, in writing, the Department Staff, and provide a Lender and or Investor (Syndicator) letter with a statement of financial feasibility."

Commenter 1 suggested the following language:

"(H) Significant increases in development costs or changes in financing that would ~~may~~ affect the financial feasibility of the Development in accordance with subchapter D, or result in reductions of Tax ~~c~~Credits between the time of 10 Percent Test and Cost Certification or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or"

STAFF RESPONSE: Staff appreciates the concern for the possibility of this process being burdensome for the Department; however, this is not a change in process or policy. The Department's Credit Analysis Underwriting Reports already include a requirement to re-evaluate changes such as those proposed in this provision and have for over the past ten years. Staff believes the addition of this provision satisfies the Department's responsibilities under Internal Revenue Code §42(m) and Texas Government Code §2306.185. Staff suggests the following language to further clarify:

"(H) Significant increases in development costs or changes in financing that ~~that may~~ affect the ~~financial feasibility of the Development~~ Department's direct loan financing structure or result in reductions of credit ~~or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~ and where either of such changes are not agreed to by the Applicant or Development Owner; or"

COMMENT SUMMARY: Commenter 1 suggested a variety of comments that were both substantive in nature and suggestive of re-organization of the flow of subsections (a) and (b) of the amendments section in §10.405. Commenter 1 recognizes and supports TDHCA's need for accurate and ongoing information about a Development, but comments regarding the amendment

process were provided with the reasoning that the process for seeking amendments is increasingly burdensome on both the ownership/financing communities and TDHCA staff. The Commenter suggested a proposal for a three-tiered system which would recognize distinctions between: 1) Notice items (immaterial items important for TDHCA's record-keeping such as small changes to a legal description, changes in ownership among family members for estate planning purposes, etc.), 2) Administrative amendments (items that can be changed with staff approval but which do not require Board consideration (such as amenities that are changed without impact on application scores), and 3) Material amendments (items as already listed that require Board approval). The Commenter has stated that the proposed changes could be made within the logical outgrowth doctrine and that the process would serve to clarify the existing published rules and establish what level of approval is required based on certain circumstances. Commenter #1 proposes the following re-organization and revised language for §10.405:

"(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. To the extent the proposed amendment does not require modification of a LURA, Department approval shall be required in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule). The request will be processed as follows:

(1) **Notification Items**. The following amendments shall not require Department approval, unless staff requires additional information or notifies the Development Owner that an administrative approval will be required:

[insert here]

(2) **Nonmaterial Amendments.** The Executive Director may administratively approve all non-material amendments, including:

(A) any amendment that is not a notification item, as identified in paragraph (1) above or a material alteration, as identified in paragraph (3) below;

(B) changes to the Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission); or

(C) changes involving the Developer or Guarantor or the Control thereof. Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(3) **Material Amendments.** Regardless of development stage, the Board shall re-evaluate a Development that undergoes a ~~substantial change~~ material alteration, as identified ~~in paragraph (4) of this subsection~~ below, at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development or Competitive HTC

Application, and may reallocate the credits to other Applicants on the waiting list. Amendment requests for a material alteration may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner;

(B) would have adversely affected the selection of the Application in the Application Round; or

(C) was reasonably foreseeable and preventable by the Development Owner unless good cause is found for the approval of the amendment.

Material alteration of an Application or Development includes, but is not limited to:

(A) any matter that would have changed the scoring of an Application in the competitive process in a manner that the Application would not have received a funding award; ~~a significant modification of the site plan;~~

(B) a significant modification of the site plan;

(C) a modification of the number of units or bedroom mix of units;

~~1.~~(D) a substantive modification of the scope of tenant services;

~~(D)~~(E) a reduction of 3 percent or more in the square footage of the units or common areas;

~~(E)~~(F) a significant modification of the architectural design of the Development;

~~2.~~(G) a modification of the residential density of at least 5 percent;

~~(F)~~(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);

~~(G)~~(I) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site proposed in Site Control in the Application;

~~(H)~~(J) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

~~3.~~(K) Significant increases in development costs or changes in financing that would ~~may~~ affect the financial feasibility determination of the Development in accordance with subchapter D, or result in reductions of Tax ~~c~~Credits between the time of 10 Percent Test and Cost Certification ~~or changes in~~

~~conditions~~ such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or

~~(I)~~(L) any other modification considered significant by the Board.

Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. §2306.6717(a)(4))

(4) **Amendments Involving Ownership.** Any amendments involving ownership of the Property or the Development Owner, directly or indirectly, shall be addressed in accordance with § 10.406.

(5) **Compliance.** This section shall be administered in a manner that is consistent with §42 of the Code. An amendment will not be approved if a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. An amendment will not be approved if the Development Owner owes fees to the Department.

~~(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.~~

~~(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))~~

~~(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:~~

(A) ~~would materially alter the Development in a negative manner; or~~

~~(i) 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:~~

~~1. a significant modification of the site plan;~~

~~2. a modification of the number of units or bedroom mix of units;~~

~~3. a substantive modification of the scope of tenant services;~~

~~4.~~1. ~~a reduction of 3 percent or more in the square footage of the units or common areas;~~

~~5.~~2. ~~a significant modification of the architectural design of the Development;~~

~~6.~~3. ~~a modification of the residential density of at least 5 percent;~~

~~7.~~4. ~~exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);~~

~~8.~~5. ~~Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or~~

~~9.~~6. ~~any other modification considered significant by the Board.~~

~~1. In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.~~

~~2. This section shall be administered in a manner that is consistent with §42 of the Code.~~

~~3. In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:~~

(A) ~~for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition,~~

~~the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and~~

(B) ~~if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the~~

~~Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.~~

~~(c)~~(a) **Amendments to the LURA.** Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request, the reason the change is necessary, the good cause for the change, financial information for the Department to evaluate the financial impact of the change, if the necessity for the amendment was reasonably foreseeable at the time of Application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). ~~t~~The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report~~;~~.

(1) Non-Material Amendments. The Executive Director or designee may administratively approve all LURA amendments which are not defined as Material Amendments pursuant to paragraph (2), below. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.

(2) Material Amendments. The Board must consider and approve a material amendment to the LURA in accordance with the following:

(A) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; ~~and~~

(B) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the draft notice within three (3) business days of receipt;

(C) Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director or Board;

(D) In the event that a Development Owner seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (i) and (ii) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(i) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. If the request is based upon financial feasibility, the lender and syndicator must submit written confirmation that the Development is financially infeasible without the adjustment in Units, and any affirmative recommendation by the staff to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(ii) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

~~**(d)** An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:~~

~~(1)~~(3) **Preparation of Amendment.** Upon approval of a LURA amendment request, Department staff will ~~evaluate the amendment request and~~ provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located.

~~**(2)**~~**(4) Compliance.** The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by

the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. ~~The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:~~

~~**(e)** the Development Owner must submit a written request accompanied by an amendment fee (except for awards that are funded only through one of the Department's Direct Loan programs, which do not require a fee) as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;~~

~~**(f)** the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;~~
(1) ~~the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and (5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt."~~

STAFF RESPONSE: While staff appreciates the effort of the Commenter in re-organizing and attempting to add clarification to the amendments rule section, staff has also noted substantive changes within the changes recommended, such that staff believes that the changes as proposed cannot all be recommended without allowing for further consideration and discussion by internal staff and the development community. As such, staff does not agree with a full reorganization of this section at this time, but has reviewed and incorporated changes considered smaller reorganization details and changes that are non-substantive in nature, which will be summarized in response to the Commenter in the block section related to §10.405 below along with staff's

additional edits. Staff also agrees with the Commenter that additional change may be needed to further clarify the amendments process and would like to begin next year's rule making cycle with an in depth review of these substantive changes, to better determine at that time what items may be incorporated and whether any process improvements may be necessary in order to better align this section of the rule with the practices and goals of the Department. Staff proposes the following amended language to §10.405(a) and (b):

"**(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA.** (§2306.6712) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a ~~substantial~~ material change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list.

(1) **Requesting an amendment**. ~~If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection~~, ~~t~~The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) **Nonmaterial Amendments**. ~~Department staff will evaluate the amendment request.~~ The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13). ~~Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))~~.

(3) **Material Amendments**. Amendments considered material pursuant to paragraph (3) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

~~(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 3 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 at least 5 percent;

(G) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);

(H) Significant increases in development costs or changes in financing which ~~that may~~ affect the ~~financial feasibility of the Development~~ Department's direct loan financing structure or result in reductions of credit ~~or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~ and where either of such changes are not agreed to by the Applicant or Development Owner; or"

(I) any other modification considered significant by the Board.

(4) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment. ~~(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification~~

~~was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.~~

(5~~6~~) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee.

(6~~7~~) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information if the change will result in any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report. LURAs will only be amended if non-compliance or outstanding payment is resolved to the satisfaction of the Department as provided in subsection (5) of this section. The Department will not approve changes

that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed. ~~Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:~~

~~(1) the Development Owner must submit a written request accompanied by an amendment fee (except for awards that are funded only through one of the Department's Direct Loan programs, which do not require a fee) as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;~~

~~(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;~~

~~(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;~~

~~(4) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and~~

~~(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.~~

(1) **Non-Material Amendments**. The Executive Director or designee may administratively approve all amendments not defined as Material Amendments pursuant to paragraph (2) below. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.

(2) **Material Amendments**. The Board must consider and approve the following material amendments:

(i) reductions to the number of Low-Income Units;

(ii) changes to the income or rent restrictions;

(iii) changes to the Target Population;

(iv) substantive modifications in the scope of tenant services

(v) the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter;

(vi) a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code;

(vii) any amendment deemed material by the Executive Director.

(3) Other Material Amendment Requirements. Prior to staff taking a recommendation to the Board for consideration, the following must take place:

(i) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The Notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(ii) ten (10) business days before the public hearing the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide

upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(4) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recordation in the county were the Development is located."

8. Section 10.406 Ownership Transfers

COMMENT SUMMARY: Commenter 7 stated that similar to concerns raised under §11.9(b)(2) of the Qualified Allocation Plan regarding Sponsor Characteristics, concerns relating to §10.406(d) may encourage the removal of participating nonprofit organizations from the development ownership structure without cause and beyond the legislative intent of HB3567 regarding changes to the Right of First Refusal when selling properties. Commenter 7 "encourage[d] staff to look at additional safeguards to protect the ownership interest of nonprofits materially participating in joint venture agreements."

STAFF RESPONSE: The comment provided was general and did not include recommended revised language or propose particular changes, to this section of the rule. Therefore, staff recommends no change based upon this comment.

COMMENT SUMMARY: Commenter 1 suggested reorganization changes to §10.406 subsections (a) and (b) and standardized use of the defined term "Principals" where possible to increase the clarity of the section. Commenter 1 also provided public comment to Subchapter A- Definitions, stating that the defined term "Qualified Purchaser" is only used twice throughout the Uniform Multifamily Rules under §10.408 regarding Qualified Contracts and further expressed support for the definition and suggested it be used more consistently, especially in the ownership transfer section of the rules. The Commenter has stated that the proposed changes could be made within the logical outgrowth doctrine and that the process would serve to clarify the existing published rules and establish what level of approval is required based on certain circumstances. Commenter 1 proposes the following re-organization and revised language for §10.406(a) and (b):

"**(a) Ownership Transfer Notification**. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) ~~Notwithstanding the foregoing, a~~ A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new ~~members~~ Principals or the transferee is a

Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible, with an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

(3) ~~Exceptions to the full approval process include c~~Changes to the investment limited partner, non-~~c~~Controlling limited partner, or other non-~~c~~Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

~~(a)~~ (4) ~~, or~~ C~~c~~hanges resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of this decision.~~.~~

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein.

~~(b)~~ **(d) Removal Issues.** If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

~~**(1) Requirement**. All new members must be eligible applicants under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews). Department approval must be requested for any new member to join in the ownership of a Development. Exceptions to the full approval process include changes to the investment limited partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Changes in Developers or Guarantors must be addressed as non-material amendments to the application under 10.405 of this subchapter. Limited Partners or other Investor or Special Limited Partners or Affiliates who were acknowledged by the Department at the time of a previous transfer but were not subject to a full approval process because of Limited Partnership,~~

~~Investor or Special Limited Partner roles with non-controlling interests in the Owner, will be subject to full ownership transfer review requirements in the event that the Limited Partner or other Investor or Special Limited Partner at any point moves to acquire any portion of controlling interest as a member of the Development Owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer.~~

~~The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.~~

~~(g)~~(c) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add ~~parties deemed to have control~~ Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain such Control, unless approved otherwise by the Board. An Applicant, General Partner or Development Owner may not sell the Development in whole or voluntarily end its Control prior to the issuance of 8609s.

~~(h)~~(d) NonProfit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development Owner, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

~~(2)~~(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

~~(3)~~(2) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization or CHDO, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

~~(4)~~(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department's Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

~~(c)~~(a) the selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

~~(d)~~(b) the participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

~~(e)~~(c) the proposed purchaser meets the Department's standards for ownership transfers.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(4) a list of the names and contact information for transferees and Principals;

(5) Previous Participation information for any new Principal as described in §10.204(13)(b) of Subchapter C;

(6) agreements among parties associated with the transfer;

(7) a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

(8) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(9) detailed information describing the organizational structure, experience, and financial capacity of the transferees and any Principal or Controlling entity;

(10) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is

approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(11) any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(g) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this part, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties, Past Due Fees and Underfunded Reserves. Any new Development Owner or new Principal of a Development Owner approved in the ownership transfer process must comply with all requirements stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner and its Principals, as on record with the Department, will be liable for any penalties or fees imposed by the Department, even if such penalty can be attributable to the new Development Owner or Principals, unless such ownership transfer is approved by the Department. In the event a Development undergoing an ownership transfer has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the proposed new Development Owner or Principals may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Development Owner or Principals as a condition to approving the Transfer.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule)."

STAFF RESPONSE: As it relates to the suggestion to utilize the defined term "Qualified Purchaser" more often, especially in the ownership transfer section of the rule, staff will take that under advisement and will look at incorporating this defined term in this section, as appropriate, in a future rule. Staff agreed with the majority of the Commenter's reorganization comments concerning §10.406 (a) and (b) related to Ownership Transfers and has incorporated reorganization and wording changes as appropriate. Staff proposes the following amended language to §10.406 (a) and (b):

"(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. ~~Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.~~

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new ~~members~~ Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible by submission of an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the same resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of the decision.

(c) General Requirements.

(1) Any new ~~member~~ Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Eligible Applicants). In addition, new ~~members with a controlling interest~~ Principals will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under item (1) of this subsection.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

~~(b) Requirements. All new members must be eligible applicants under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews). Department approval must be requested for any new member to join in the ownership of a Development. Exceptions to the full approval process include changes to the investment limited partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter. Limited Partners or other Investor or Special Limited Partners or Affiliates who were acknowledged by the Department at the time of a previous transfer but were not subject to a full approval process because of Limited Partnership, Investor or Special Limited Partner roles with non-controlling interests in the Owner, will be subject to full ownership transfer review requirements in the event that the Limited Partner or other Investor or Special Limited Partner at any point moves to acquire any portion of controlling interest as a member of the Development Owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, the Development Owner shall be required to notify the Department~~

~~but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.~~

(e)~~(c)~~ Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals ~~parties deemed to have control~~. The party(ies) reflected n the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their control prior to the issuance of 8609s."

COMMENT SUMMARY: Commenter 1 proposed the following language for 10.406(f)(5), and staff agrees with the amended language as proposed:

"(5) Previous Participation information for any new Principal ~~or natural person~~ as described in §10.204(13)(b) of Subchapter C;"

STAFF RESPONSE: Staff agrees with the amended language as proposed.

COMMENT SUMMARY: Commenter 2 supports staff proposed changes to the §10.406(d)(3) as it relates to Non-Profit Organizations, stating that the membership appreciates the provision for greater flexibility in cases where an award was not made out of the non-profit set aside.

STAFF RESPONSE: Staff appreciates the positive comment and recommends no further change.

9. Section 10.407 Right of First Refusal

COMMENT SUMMARY: Commenter 1 recommended the implementation of a definition of "Qualified Entity" that is consistent with statute. Commenter 1 states that HB 3576 has expanded the type of entities that can acquire under the ROFR process to include any entity permitted under §42(i)(7) of the Code and any entity controlled by such a qualified entity, and recommends that the newly defined term be used wherever reference to a Qualified Nonprofit Organization or tenant organization is made. Commenter 1 provided the proposed new definition below:

"**Qualified Entity** – any entity permitted under §42(i)(7)(B) of the Code and any entity controlled by such a qualified entity."

STAFF RESPONSE: Staff agrees with the definition as proposed. Staff also recommends amending the current definition of Right of First Refusal under §10.3, Subchapter A, Definitions as reflected below:

"**Right of First Refusal**- An Agreement to provide a right to purchase the Property to a Qualified ~~Nonprofit Organization or tenant organization~~ Entity with priority to that of any other buyer at a price whose formula is prescribed in the LURA."

COMMENT SUMMARY: Commenter 1 provided comment and suggested amended language to §10.407 intended to assist the Department with implementing HB 3576, relating to entities that can acquire under the Right of First Refusal (ROFR) process. Commenter 1 indicates that changes made to the ROFR are based upon the fundamental understanding that the statutory changes applies to transfer of any ROFR property with an allocation of LIHTC before, on, or after the effective date of the act. Therefore, certain provisions of HB 3576 should apply to all LIHTC properties with a ROFR currently in existence. Commenter 1 proposes the following revised language for §10.407:

"**(a) General**. This section applies to Development Owners~~LURAs that provided an incentive for Development Owners~~ that agreed to offer a Right of First Refusal (ROFR) to a Qualified ~~ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c)of the Code or tenant organizations~~ Entity, as memorialized in the applicable LURA. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified ~~ROFR Organization~~ Entity without going through the ROFR process outlined in this section.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a conflict between the LURA and statute exists the Development Owner may request a LURA amendment to be consistent with any changes to Texas Government Code §2306.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under § 10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to § 10.405. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Entity~~, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity~~ that is considered an ineligible entity under the Department's ~~most recent Qualified Allocation Plan~~rules. In addition, ownership transfers to a Qualified ~~ROFR Organization~~ Entity ~~during~~ pursuant to the ROFR ~~period~~ process are subject to Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) ~~A right of first refusal~~ The ROFR process is not triggered if a Development Owner seeks ~~the~~ to transfer ~~is made~~ the Development to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

~~(C) Any additional ownership entities are subject to Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).~~

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified~~ ROFR Organization~~Entity or pursuant to subpart (a)(6) above, the Development Owner shall provide a notice of intent to the Department, to the residents, and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ~~ROFR Organization~~ Entity that has a ~~limited priority in exercising~~ contractual ~~a~~ ROFR to purchase the Development, the Development Owner must identify that entity to the Department and first offer the Property to this entity. If the ~~nonprofit e~~Qualified Entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the ~~notice of intent to sell the Property and the~~ ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met and will notify the Development Owner of its determination in writing. In the event that the ~~organization~~ Qualified Entity with the contractual ROFR is not operating or in existence at the time the Development Owner intends to sell,~~when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development~~

~~Owner~~ the provisions of this Section shall apply to any proposed sale by the Development Owner. ~~Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price~~;

(2) documentation verifying the ROFR offer price of the ~~p~~Property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ~~ROFR Organization~~ Entity that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code conducted by a Third-Party;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the ~~nonprofit~~ buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ~~ROFR Organization~~Entity, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ~~ROFR Organization~~ Entity selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

(1) if the LURA requires a 90 day ROFR posting period, within 90 days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a ~~q~~Qualified ~~ROFR organization~~ Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a ~~q~~Qualified ~~ROFR organization~~ Entity is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the ~~nonprofit~~ Qualified Entity fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this part, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a ~~nonprofit~~ Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the 90 day period;

(D) ~~if no bona fide offers are received during the 90 day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process~~ request a Preliminary Qualified Contract (if such opportunity is available under § 10.408)or proceed with the sale to a~~ for-profit buyer~~n entity that is not a Qualified Entity at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted ~~at least~~ no more than 2 years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. 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 within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified ~~Nonprofit Organization~~ Entity that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Entity that is a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified ~~Nonprofit Organization~~ Entity approved by the Department ~~or a tenant organization approved by the Department~~;

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ~~ROFR Organization~~ Entity or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the Qualified Contract process~~ request a Preliminary Qualified Contract (if such opportunity is available under § 10.408 or proceed with the sale to a ~~for-profit~~ buyer that is not a Qualified Entity at or above the ~~m~~Minimum ~~p~~Purchase ~~p~~Price.

(3) if the Development Owner has a LURA or has amended the LURA to require a 180 day ROFR posting period pursuant to Texas Government Code §2306.6725, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the notice of intent shall be given to the Department as described in this section. ~~Development Owner shall notify the Department and the tenants of the development of the owner's intent to sell. The Development Owner shall also identify to the Department any qualified entity that is the owner's intended recipient of the right of first refusal in the LURA, if applicable. As soon as practicable after receiving the Development Owner's notice, and if the owner has specifically identified any qualified entity that is the owner's intended recipient of the ROFR, the Department shall provide notice to any identified qualified entity of the owner's intent to sell the development and shall post the notice to the Department's website. The owner's notice of intent to sell shall be given within 180 days before the date upon which the Development Owner intends to sell the Development in order for~~

~~the 90 day ROFR posting period to be completed prior to the intended sale.~~ The 180 day ROFR period referenced in this paragraph begins when the Department has received and approval all documentation required under subsection (c)(1) – (12) of this section. During the 180 days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first 60 day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a ~~q~~Qualified ~~e~~Entity that is controlled by a Community Housing Development Organization, and is approved by the Department;

(B) during the second 60 day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a ~~q~~Qualified ~~e~~Entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;

(C) during the last sixty (60) day period after notice of intent, with any other ~~q~~Qualified ~~e~~Entity that is approved by the Department;

(D) f, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the price that the Department determines to be reasonable from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at ~~a~~the Minimum Purchase ~~p~~Price ~~determined to be reasonable by the Department~~ were received from a Qualified ~~ROFR Organization or by the Department~~Entity, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the Qualified Contract process~~ request a Preliminary Qualified Contract (if such opportunity is available under § 10.408 or proceed with the sale to a ~~for-profit~~ buyer that is not a Qualified Entity at or above the Minimum Purchase ~~p~~Price ~~determined to be reasonable by the Department~~;

(F) this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a ~~q~~Qualified ~~e~~Entity.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Develop_ment that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that

received a tax credit allocation on or after September 1, 1997 and until September 1, 2015 is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. 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.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

(1) the best interests of the residents of the Development;

(2) the impact the decision would have on other Developments in the Department's portfolio;

(3) the source of the data used as the basis for the Development Owner's appeal;

(4) the rights of nonprofits under the ROFR;

(5) any offers from an eligible nonprofit to purchase the Development; and

(6) other factors as deemed relevant by the Executive Director."

STAFF RESPONSE: Staff agrees with the amended language as proposed.

The Board approved the final order adopting the new sections on November 12, 2015.

STATUTORY AUTHORITY. The new sections were adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed adoption affects no other code, article or statute.

§10.400.Purpose.

The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved satisfactorily to the Department, EARAC or excepted by the Board, before a request for any post award activity described in this subchapter will be completed.

§10.401.General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination 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.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and rule, including but not limited to the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an Award Letter and Loan Term Sheet in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal Commitment. For HOME Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

§10.402.Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified

therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 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. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have sufficient ~~the~~ authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control ~~and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents~~consistent with the entity contemplated and described in the Application;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney indentifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;

(B) a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;

(C) a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a).

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than one year from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in

the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site Acreage ~~Control of the Development Site at~~between Application and Carryover must be ~~identical to the Development Site that was submitted at the time of Application submission~~ addressed by written explanation or, as appropriate, in accordance with §10.405~~or last approved by amendment as determined by the Department~~.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, under §11.2, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (6) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (6) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for extension will be reviewed on a case by case basis as addressed in §10.405(d) of this chapter and a point deduction evaluation will be completed in accordance with Texas Government Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an

Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission ~~or last approved by amendment as determined by the Department~~. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405;

(3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(4) for the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Certifications required under this paragraph must not be older than one year from the date of the 10 Percent Test Documentation submission deadline; and

(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified ~~on the Org Charts submitted~~ at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors ~~and members~~or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

(6) a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(h) Construction Status Report. Within three (3) months of the 10 Percent Test submission and every quarter thereafter, all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA

Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or ~~members with potential control have been added to the Guarantors and members identified on the Org Charts submitted~~Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter and the new Guarantors and ~~members~~ all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. Electronically recorded LURAs provided to the Department will be acceptable in lieu of the original, recorded copy.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities Only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) may be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Owner's Statement of Certification

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors

(iii) Evidence of Qualified Nonprofit or CHDO Participation

(iv) Evidence of Historically Underutilized Business (HUB) Participation

(v) Development Team List

(vi) Development Summary with Architect's Certification

(vii) Development Change Documentation

(viii) As Built Survey

(ix) Closing Statement

(x) Title Policy

(xi) Title Policy Update

(xii) Placement in Service

(xiii) Evidence of Placement in Service

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election

(xvi) Independent Auditor's Report

(xvii) Independent Auditor's Report of Bond Financing

(xviii) Development Cost Schedule

(xix) Contractor's Application for Final Payment (G702/G703)

(xx) Additional Documentation of Offsite Costs

(xxi) Rent Schedule

(xxii) Utility Allowances

(xxiii) Annual Operating Expenses

(xxiv) 30 Year Rental Housing Operating Pro Forma

(xxv) Current Operating Statement

(xxvi) Current Rent Roll

(xxvii) Summary of Sources and Uses of Funds

(xxviii) Financing Narrative

(xxix) Final Limited Partnership Agreement

(xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department)

(xxxi) Architect's Certification of Fair Housing Requirements

(xxxii) Development Owner Assignment of Individual to Compliance Training

(xxxiii) TDHCA Compliance Training Certificate

(xxxiv) TDHCA Final Inspection Clearance Letter

(xxxv) Other Documentation as Required

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the Corrective Action Period and/or with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee;

(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403.Direct Loans.

(a) Loan Closing. The loan closing must occur no more than six months from the date of the Conditional Commitment or similar document is executed, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.

Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/ Architect agreement;

(4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(5) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy) and will be required to be approved by the Executive Director or the Board;

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:

(A) environmental clearance;

(B) verification of HUD Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited

to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, HOME contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) - (9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

(1) except for disbursement requests made for acquisition and closing costs or requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date on AIA form G702 or sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for periodic disbursements, or such lesser amount provided it meets all federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;

(4) if applicable, up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal contract or commitment with the vendor clearly delineating the donated portion of the contract price, invoices showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 25 percent of funds. If funds are requested on the day of closing, an executed formal contract specifying the terms of the Match must be provided;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it is determines that the Development is not progressing as necessary to meet the benchmarks for the timely completion of construction of the Development that is set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction of the Development Owner's ability to repay its Direct Loan or complete the construction of the Development in accordance with the terms of the loan documents and within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;

(7) table funding requests will not be considered unless:

(A) a "Commitment to a specific local project" as defined in 24 CFR Part 92 has been made, if applicable; and

(B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;

(8) each Development Owner must request a progress inspection from Department staff once the property passes 25 percent construction completion based on the AIA G702-703. Up to 50

percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;

(9) Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

(A) Certificate of Substantial Completion (AIA Form G704);

(B) A down date endorsement dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(E) Receipt of Certificates of Occupancy for New Construction or a Certificate of Substantial Completion (AIA Form G704); from the Development Architect for Rehabilitation;

(F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, Davis-Bacon Act, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

§10.404.Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter, and the Development does not have an existing replacement reserve account, or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a PCA, the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular

deposits to the replacement reserve account can be increased, regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PCA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or

(B) the date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) date on which the Development is demolished;

(C) date on which the Development ceases to be used as a multifamily rental property; or

(D) end of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations (but not for the construction standards required by the NOFA or program regulations), or demonstrated financial hardship; or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA must be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department. PCAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the eleventh (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) whether a PCA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling

Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) a Reserve Account, as described in this section, has not been established for the Development;

(B) the Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party Property Condition Assessment or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels;

(C) In the event of (A) or (B) above, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred developer fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the

reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the

Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department, Development Owner and financial institution representative.

(4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

§10.405.Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a ~~substantial~~ material change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. ~~If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, t~~The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Nonmaterial amendments. ~~Department staff will evaluate the amendment request.~~ The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13). ~~Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))~~

(3) Material amendments. Amendments considered material pursuant to paragraph (3) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

~~(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 3 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 at least 5 percent;

(G) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);

(H) Significant increases in development costs or changes in financing that ~~may~~ affect the ~~financial feasibility of the Development~~Department's direct loan financing structure or result in reductions of credit ~~or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~and where either of such changes are not agreed to by the Applicant or Development Owner; or

(I) any other modification considered significant by the Board.

(~~5~~4) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.~~In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.~~

(~~6~~5) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department prior to approving an amendment request unless otherwise approved by the Executive Award Review and Advisory Committee.

(~~7~~6) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in

subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information if the change will result in any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report. LURAs will only be amended if non-compliance or outstanding payment is resolved to the satisfaction of the Department as provided in subsection (5) of this section. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed. ~~Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive~~

~~Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) – (5) of this subsection must be followed:~~

(1) Non-Material Amendments. The Executive Director or designee may administratively approve all amendments not defined as Material Amendments pursuant to paragraph (2) below. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.

(2) Material Amendments. The Board must consider and approve the following material amendments:

(i) reductions to the number of Low-Income Units;

(ii) changes to the income or rent restrictions;

(iii) changes to the Target Population;

(iv) substantive modifications in the scope of tenant services

(v) the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter;

(vi) a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code;

(vii) any amendment deemed material by the Executive Director.

(3) Other Material Amendment Requirements. Prior to staff taking a recommendation to the Board for consideration, the following must take place:

(i) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The Notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(ii) ten (10) business days before the public hearing the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(4) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recordation in the county were the Development is located."

~~the Development Owner must submit a written request accompanied by an amendment fee (except for awards that are funded only through one of the Department's Direct Loan programs, which do not require a fee) as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;~~

~~(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;~~

~~(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;~~

~~(4) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and~~

~~(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.~~

(c) Amendments to Direct Loan Terms. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 15 months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(7) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406.Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. ~~Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.~~

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible by submission of an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the same resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of the decision.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Eligible Applicants). In addition, Principals will be reviewed in

accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under item (1) of this subsection.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

~~Requirement. All new members must be eligible applicants under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews). Department approval must be requested for any new member to join in the ownership of a Development. Exceptions to the full approval process include changes to the investment limited partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter. Limited Partners or other Investor or Special Limited Partners or Affiliates who were acknowledged by the Department at the time of a previous transfer but were not subject to a full approval process because of Limited Partnership, Investor or Special Limited Partner roles with non-controlling interests in the Owner, will be subject to full ownership transfer review requirements in the event that the Limited Partner or other Investor or Special Limited Partner at any point moves to acquire any portion of controlling interest as a member of the Development Owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the~~

~~transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.~~

(~~c~~e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals~~parties deemed to have control~~. The party(ies) reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their control prior to the issuance of 8609s.

(~~d~~f) NonProfit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization or CHDO, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department's Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) the selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) the participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) the proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(~~e~~g) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB

status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(~~f~~h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(4) a list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal ~~or natural person~~ as described in §10.204(13)(B) of Subchapter C;

(6) agreements among parties associated with the transfer;

(7) a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

(8) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(9) detailed information describing the organizational structure, experience, and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(10) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(11) any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(~~g~~i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

(~~h~~j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(~~i~~k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(~~j~~l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407.Right of First Refusal.

(a) General. This section applies to Development Owners ~~LURAs that provided an incentive for Development Owners~~ that agreed to offer a Right of First Refusal (ROFR) to a Qualified ~~ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) of the Code or tenant organizations~~Entity, as memorialized in the applicable LURA. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified ~~ROFR Organization~~Entity without going through the ROFR process outlined in this section.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a conflict between the LURA and statute exists the Development Owner may request a LURA amendment to be consistent with any changes to Texas Government Code Chapter 2306.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Entity~~, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity~~ that is considered an ineligible entity under the Department's ~~most recent Qualified Allocation Plan~~rules. In addition, ownership transfers to a Qualified ~~ROFR Organization~~Entity ~~during the~~pursuant to the ROFR ~~period~~ process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) ~~A right of first refusal~~The ROFR process is not triggered if a Development Owner seeks ~~the~~ to transfer ~~is made~~the Development to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

~~(C) Any additional ownership entities are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).~~

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified ~~ROFR Organization~~Entity or pursuant to subpart (a)(6) above, the Development Owner shall provide a notice of intent to the Department, to the residents, ~~-~~and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ~~ROFR Organization~~Entity that has a ~~limited priority in exercising~~contractual ~~a~~ ROFR to purchase the Development, the Development Owner must identify that entity to the Department and first offer the Property to this entity. If the ~~nonprofit~~Qualified E~~e~~ntity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the ~~notice of intent to sell the Property and the~~ ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met and will notify the Development Owner of its

determination in writing. In the event that the ~~organization~~ Qualified Entity with the contractual ROFR is not operating or in existence at the time the Development Owner intends to sell ~~when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner~~the provisions of this Section shall apply to any proposed sale by the Development Owner. ~~Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price~~;

(2) documentation verifying the ROFR offer price of the ~~property~~Property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ~~ROFR Organization~~Entity that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code conducted by a Third-Party;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the ~~nonprofit~~ buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ~~ROFR Organization~~Entity, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ~~ROFR Organization~~Entity selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

(1) if the LURA requires a 90 day ROFR posting period, within 90 days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a ~~qualified~~ Qualified ~~ROFR organization~~Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a ~~qualified~~ Qualified ~~ROFR organization~~Entity is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the ~~nonprofit~~ Qualified Entity fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C

of this title, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a ~~nonprofit~~ Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the 90 day period;

(D) ~~if no bona fide offers are received during the 90 day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process~~request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Entity ~~for-profit buyer~~ at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted ~~at least~~no more than 2 years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. 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 within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified ~~Nonprofit Organization~~Entity that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified ~~Nonprofit Organization~~Entity or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified ~~Nonprofit Organization~~Entity approved by the Department ~~or a tenant organization approved by the Department~~;

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such

organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ~~ROFR Organization~~Entity or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the~~request a Preliminary Qualified Contract (if such opportunity is available under §10.408) ~~process~~ or proceed with the sale to a ~~for-profit~~ buyer that is not a Qualified Entity at or above the ~~minimum~~ Minimum ~~purchase~~ Purchase ~~price~~Price.

(3) if the Development Owner has a LURA or has amended the LURA to require a 180 day ROFR posting period pursuant to Texas Government Code §2306.6725, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the notice of intent shall be given to the Department as described in this section. ~~Development Owner shall notify the Department and the tenants of the development of the owner's intent to sell. The Development Owner shall also identify to the Department any qualified entity that is the owner's intended recipient of the right of first refusal in the LURA, if applicable. As soon as practicable after receiving the Development Owner's notice, and if the owner has specifically identified any qualified entity that is the owner's intended recipient of the ROFR, the Department shall provide notice to any identified qualified entity of the owner's intent to sell the development and shall post the notice to the Department's website. The owner's notice of intent to sell shall be given within 180 days before the date upon which the Development Owner intends to sell the Development in order for the 90 day ROFR posting period to be completed prior to the intended sale.~~ The 180 day ROFR period referenced in this paragraph begins when the Department has received and approval all documentation required under subsection (c)(1) - (12) of this section. During the 180 days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first 60 day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a ~~qualified~~ Qualified ~~entity~~ Entity that is controlled by a Community Housing Development Organization, and is approved by the Department;

(B) during the second 60 day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a ~~qualified~~ Qualified ~~entity~~ Entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;

(C) during the last sixty (60) day period after notice of intent, with any other ~~qualified~~ Qualified ~~entity~~ Entity that is approved by the Department;

(D) if, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the price that the Department determines to be reasonable from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at the Minimum Purchase Price ~~a price determined to be reasonable by the Department~~ were received from a Qualified ~~ROFR Organization or by the Department~~Entity, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the~~request a Preliminary Qualified Contract (if such opportunity is available under §10.408) ~~process~~ or proceed with the sale to a ~~for-profit~~ buyer that is not a Qualified Entity at or above the Minimum Purchase ~~price~~ Price~~determined to be reasonable by the Department~~;

(F) this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a ~~qualified~~ Qualified ~~entity~~Entity.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 and until September 1, 2015 is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. 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.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change

in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

(1) the best interests of the residents of the Development;

(2) the impact the decision would have on other Developments in the Department's portfolio;

(3) the source of the data used as the basis for the Development Owner's appeal;

(4) the rights of nonprofits under the ROFR;

(5) any offers from an eligible nonprofit to purchase the Development; and

(6) other factors as deemed relevant by the Executive Director.

§10.408.Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise stated in the LURA,

Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Development does not have any uncorrected issues of noncompliance outside the Corrective Action Period;

(B) there is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);

(D) copy of the most recent Physical Needs Assessment, pursuant to Texas Government Code §2306.186(e), conducted by a Third Party.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed six percent of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

(2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the

possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring).

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 15, 2015

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER E, ASSET MANAGEMENT RULES, SECTIONS 10.402, 10.405, AND 10.406**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter E, Asset Management Rules, Sections 10.402, 10.405, and 10.406.

General Comment: In commenting on these three sections of the Rules, I intend to address two major topics: (1) the ownership transfer process and (2) the amendment process.

As to the ownership transfer process, I appreciate TDHCA's attempt to clarify the requirements for making a change in the Developer or Guarantor for a transaction. This will help alleviate some uncertainty that has been ongoing in the community. I also appreciate TDHCA's revision of the rules regarding a change in ownership prior to the issuance of Forms 8609. We find banks and investors imposing rigorous financial suitability and experience requirements, and it is not uncommon for an additional party to be required in order to complete and close the transaction. This change should help smaller and first-time developers to achieve financing on their transactions. Finally, I believe some of the language related to changes of ownership within a Development Owner could benefit from some clarification, and my proposed revisions are intended for that purpose.

As to the amendment process, we are finding the process for seeking amendments to be increasingly burdensome on both the ownership/financing communities and TDHCA staff. We

recognize and support TDHCA's need for accurate and ongoing information about a Development. Certainly, each Development Owner should be responsible for the provision of that information to the agency. However, I believe we all recognize that real estate transactions such as these are going to change, in major and minor ways. No transaction is the same on the day of closing as it was on the day of application. The challenge, then, is to make sure that TDHCA receives the information it needs and has the opportunity to approve changes when appropriate while avoiding a bureaucratic process where every small change requires a permission, whether from the staff or Board. I believe TDHCA has made some improvements with regard to clarifying the requirements for amendments, but I believe further improvements could be made. My comments are intended for that purpose. Foremost, I propose to establish a three-tiered system:

- Notice items. These are items that are immaterial, but may be important for TDHCA's record-keeping. Examples would include: small changes to a real estate legal description within certain parameters; or changes in ownership among family members solely for estate planning purposes. For one of these items, a Development Owner would provide TDHCA with notice of the change. TDHCA would reserve the right to ask for more information or even ask the Development Owner to submit an amendment request, if it believes the items does not fit within the notice category.

- Administrative amendments. These are items that can be changed with staff approval and do not require Board consideration. Examples would be amenities that are changed without any impact on scoring.

- Material amendments. Section 10.405 already has a list of material amendments that require Board approval. We recommend continuing those provisions and simply clarifying to the extent necessary.

I believe these changes could be made within the logical outgrowth doctrine. The rules, as published, clearly indicate that a Development Owner must interact with TDHCA when changes to the Application are made. The process proposed is simply to clarify the existing published rules as to what level of approval is required in certain circumstances.

I have attached both a redline and a clean copy of my proposed revisions, in an attempt to aid review. There are a few formatting problems, possibly related to converting the file from PDF, that I have been unable to overcome. You will see that many of the changes in Section 10.405 relate to reorganizing the language and not changing the language.

I appreciate the opportunity to present these comments and am happy to discuss these ideas further, if it would be helpful.

Subchapter E – Post Award and Asset Management Requirements

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required feespecified in §10.901 of this chapter, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 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. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in

paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the development plan;

(5) evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;

(B) a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;

(C) a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a).

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than one year from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes in Site Control of the Development Site between Application and Carryover must be addressed in accordance with § 10.405.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (6) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for extension will be reviewed on a case by case basis as addressed in §10.405(d) of this

chapter and a point deduction evaluation will be completed in accordance with Texas Government Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. For purposes of this paragraph, any changes in the Development Site between prior to the 10 Percent Test must be addressed in accordance with § 10.405;

(3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(4) For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five

(5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Certifications required under this paragraph must not be older than one year from the date of the 10 Percent Test Documentation submission deadline; and

(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(6) a Development Owner’s preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(7) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of 10 Percent Test from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(h) Construction Status Report. Within three (3) months of the 10 Percent Test submission and every quarter thereafter, all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors have changed from the Guarantors identified at the time of the 10 Percent Test, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews);

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. Electronically recorded LURAs provided to the Department will be acceptable in lieu of the original, recorded copy.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities Only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxviii) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) may be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Owner's Statement of Certification

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors

(iii) Evidence of Qualified Nonprofit or CHDO Participation

(iv) Evidence of Historically Underutilized Business (HUB) Participation

(v) Development Team List

(vi) Development Summary with Architect's Certification

(vii) Development Change Documentation

(viii) As Built Survey

(ix) Closing Statement

(x) Title Policy

(xi) Title Policy Update

(xii) Placement in Service

(xiii) Evidence of Placement in Service

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election

(xvi) Independent Auditor's Report

(xvii) Independent Auditor's Report of Bond Financing

(xviii) Development Cost Schedule

(xix) Contractor's Application for Final Payment (G702/G703)

(xx) Additional Documentation of Offsite Costs

(xxi) Rent Schedule

(xxii) Utility Allowances

(xxiii) Annual Operating Expenses

(xxiv) 30 Year Rental Housing Operating Pro Forma

(xxv) Current Operating Statement

(xxvi) Current Rent Roll

(xxvii) Summary of Sources and Uses of Funds

(xxviii) Financing Narrative

(xxix) Final Limited Partnership Agreement

(xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department)

(xxxi) Architect's Certification of Fair Housing Requirements

(xxxii) Development Owner Assignment of Individual to Compliance Training

(xxxiii) TDHCA Compliance Training Certificate

(xxxiv) TDHCA Final Inspection Clearance Letter

(xxxv) Other Documentation as Required

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the Corrective Action Period and/or with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee;

(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. To the extent the proposed amendment does not require modification of a LURA, Department approval shall be required in accordance with this section. An amendment request shall be submitted in writing,

containing a detailed explanation of the amendment request and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule). The request will be processed as follows:

(1) **Notification Items.** The following amendments shall not require Department approval, unless staff requires additional information or notifies the Development Owner that an administrative approval will be required:

[insert here]

(2) **Nonmaterial Amendments**. The Executive Director may administratively approve all non-material amendments, including:

(A) any amendment that is not a notification item, as identified in paragraph (1) above or a material alteration, as identified in paragraph (3) below;

(B) changes to the Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission); or

(C) changes involving the Developer or Guarantor or the Control thereof. Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(3) **Material Amendments.** Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material alteration, as identified below, at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list. Amendment requests for a material alteration may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner;

(B) would have adversely affected the selection of the Application in the Application Round; or

(C) was reasonably foreseeable and preventable by the Development Owner unless good cause is found for the approval of the amendment.

Material alteration of an Application or Development includes, but is not limited to:

(A) any matter that would have changed the scoring of an Application in the competitive process in a manner that the Application would not have received a funding award;

(B) a significant modification of the site plan;

(C) a modification of the number of units or bedroom mix of units;

(D) a substantive modification of the scope of tenant services;

(E) a reduction of 3 percent or more in the square footage of the units or common areas;

(F) a significant modification of the architectural design of the Development;

(G) a modification of the residential density of at least 5 percent;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);

(I) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site proposed in Site Control in the Application;

(J) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(K) Significant increases in development costs or changes in financing that would affect the financial feasibility determination of the Development in accordance with subchapter D, or result in reductions of Tax Credits between the time of 10 Percent Test and Cost Certification such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or

(L) any other modification considered significant by the Board.

Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(4) **Amendments Involving Ownership.** Any amendments involving ownership of the Property or the Development Owner, directly or indirectly, shall be addressed in accordance with § 10.406.

(5) **Compliance.** This section shall be administered in a manner that is consistent with §42 of the Code. An amendment will not be approved if a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being

amended) unless otherwise approved by the Executive Award Review and Advisory Committee. An amendment will not be approved if the Development Owner owes fees to the Department.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request, the reason the change is necessary, the good cause for the change, financial information for the Department to evaluate the financial impact of the change, if the necessity for the amendment was reasonably foreseeable at the time of Application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report.

(1) **Non-Material Amendments.** The Executive Director or designee may administratively approve all LURA amendments which are not defined as Material Amendments pursuant to paragraph (2), below. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.

(2) **Material Amendments**. The Board must consider and approve a material amendment to the LURA in accordance with the following:

(A) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality;

(B) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the draft notice within three (3) business days of receipt;

(C) Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director or Board;

(D) In the event that a Development Owner seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described

in subparagraphs (i) and (ii) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(i) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. If the request is based upon financial feasibility, the lender and syndicator must submit written confirmation that the Development is financially infeasible without the adjustment in Units, and any affirmative recommendation by the staff to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(ii) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(3) **Preparation of Amendment.** Upon approval of a LURA amendment request, Department staff will provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located.

(4) **Compliance.** The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department.

(c) Amendments to Direct Loan Terms. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 15 months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(7) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible, with an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of this decision.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein.

(d) Removal Issues. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain such Control, unless approved otherwise by the Board. An Applicant, General Partner or Development Owner may not sell the Development in whole or voluntarily end its Control prior to the issuance of 8609s.

(d) NonProfit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development Owner, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization or CHDO, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department's Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(a) the selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(b) the participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(c) the proposed purchaser meets the Department's standards for ownership transfers.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(3) a list of the names and contact information for transferees and Principals;

(4) Previous Participation information for any new Principal as described in §10.204(13)(b) of Subchapter C;

(5) agreements among parties associated with the transfer;

(6) a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) detailed information describing the organizational structure, experience, and financial capacity of the transferees and any Principal or Controlling entity;

(9) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(g) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this part, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties, Past Due Fees and Underfunded Reserves. Any new Development Owner or new Principal of a Development Owner approved in the ownership transfer process must comply with all requirements stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner and its Principals, as on record with the Department, will be liable for any penalties or fees imposed by the Department, even if such penalty can be attributable to the new Development Owner or Principals, unless such ownership transfer is approved by the Department. In the event a Development undergoing an ownership transfer has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the proposed new Development Owner or Principals may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a

plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Development Owner or Principals as a condition to approving the Transfer.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Subchapter E – Post Award and Asset Management Requirements

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) (b) **Determination Notices.** For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 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. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in

paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution~~ which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents~~;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the ~~D~~development plan;

(5) evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;

(B) a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;

(C) a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a).

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than one year from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes in Site Control of the Development Site ~~at~~ between Application and Carryover must be~~ identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department~~ addressed in accordance with § 10.405.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (6) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (~~6~~7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for

extension will be reviewed on a case by case basis as addressed in §10.405(d) of this chapter and a point deduction evaluation will be completed in accordance with Texas Government Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site.~~ The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department~~ For purposes of this paragraph, any changes in the Development Site between prior to the 10 Percent Test must be addressed in accordance with § 10.405;

(3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(4) For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five

(5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Certifications required under this paragraph must not be older than one year from the date of the 10 Percent Test Documentation submission deadline; and

(6) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors identified ~~on the Org Charts submitted~~ at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors ~~and members~~ must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(7) a Development Owner’s preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(8) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of 10 Percent Test from what was

proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.
~~(A)~~

(h) Construction Status Report. Within three (3) months of the 10 Percent Test submission and every quarter thereafter, all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors ~~or members with potential control have been added to the Guarantors and members~~ have changed from the Guarantors identified ~~on the Org Charts submitted~~ at the time of ~~Application~~the 10 Percent Test, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantor~~s and member~~s must be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews);

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The

Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. Electronically recorded LURAs provided to the Department will be acceptable in lieu of the original, recorded copy.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities Only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxviii) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) may be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Owner's Statement of Certification

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors

(iii) Evidence of Qualified Nonprofit or CHDO Participation

(iv) Evidence of Historically Underutilized Business (HUB) Participation

(v) Development Team List

(vi) Development Summary with Architect's Certification

(vii) Development Change Documentation

(viii) As Built Survey

(ix) Closing Statement

(x) Title Policy

(xi) Title Policy Update

(xii)Placement in Service

(xiii) Evidence of Placement in Service

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election

(xvi) Independent Auditor's Report

(xvii) Independent Auditor's Report of Bond Financing

(xviii) Development Cost Schedule

(xix) Contractor's Application for Final Payment (G702/G703)

(xx)Additional Documentation of Offsite Costs

(xxi) Rent Schedule

(xxii) Utility Allowances

(xxiii) Annual Operating Expenses

(xxiv) 30 Year Rental Housing Operating Pro Forma

(xxv) Current Operating Statement

(xxvi) Current Rent Roll

(xxvii) Summary of Sources and Uses of Funds

(xxviii) Financing Narrative

(xxix) Final Limited Partnership Agreement

(xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department)

(xxxi) Architect's Certification of Fair Housing Requirements

(xxxii) Development Owner Assignment of Individual to Compliance Training

(xxxiii) TDHCA Compliance Training Certificate

(xxxiv) TDHCA Final Inspection Clearance Letter

(xxxv) Other Documentation as Required

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the Corrective Action Period and/or with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee;

(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Once a Development receives a Commitment or Determination Notice, the Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The

Department must receive notification of any amendments to the Application. To the extent the proposed amendment does not require modification of a LURA, Department approval shall be required in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule). The request will be processed as follows:

(1) **Notification Items.** The following amendments shall not require Department approval, unless staff requires additional information or notifies the Development Owner that an administrative approval will be required:

[insert here]

(2) **Nonmaterial Amendments**. The Executive Director may administratively approve all non-material amendments, including:

(A) any amendment that is not a notification item, as identified in paragraph (1) above or a material alteration, as identified in paragraph (3) below;

(B) changes to the Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission); or

(C) changes involving the Developer or Guarantor or the Control thereof. Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13).

(3) **Material Amendments.** Regardless of development stage, the Board shall re-evaluate a Development that undergoes a ~~substantial change~~ material alteration, as identified ~~in paragraph (4) of this subsection~~ below, at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development or Competitive HTC Application, and may reallocate the credits to other Applicants on the waiting list. Amendment requests for a material alteration may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner;

(B) would have adversely affected the selection of the Application in the Application Round; or

(C) was reasonably foreseeable and preventable by the Development Owner unless good cause is found for the approval of the amendment.

Material alteration of an Application or Development includes, but is not limited to:

(A) any matter that would have changed the scoring of an Application in the competitive process in a manner that the Application would not have received a funding award;~~a significant modification of the site plan;~~

~~(F)~~ (B) a significant modification of the site plan;

(C) a modification of the number of units or bedroom mix of units;

(D) a substantive modification of the scope of tenant services;

(E)

(E) a reduction of 3 percent or more in the square footage of the units or common areas;

~~(E) a reduction of 3 percent or more in the square footage of the units or common areas;~~

(F) ~~a~~ a significant modification of the architectural design of the Development;

(G) a modification of the residential density of at least 5 percent;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);

~~(M)~~(I) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site proposed in Site Control in the Application;

(J) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

~~(H)~~(K) Significant increases in development costs or changes in financing that would ~~may~~ affect the financial feasibility determination of the Development in accordance with subchapter D, or result in reductions of Tax ~~c~~Credits between the time of 10 Percent Test and Cost Certification ~~or changes in conditions~~ such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or

~~(N)~~(L) any other modification considered significant by the Board.

Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(4) **Amendments Involving Ownership.** Any amendments involving ownership of the Property or the Development Owner, directly or indirectly, shall be addressed in accordance with § 10.406.

(5) **Compliance.** This section shall be administered in a manner that is consistent with §42 of the Code. An amendment will not be approved if a Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. An amendment will not be approved if the Development Owner owes fees to the Department.

~~(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.~~

~~(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))~~

~~(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:~~

~~(A) would materially alter the Development in a negative manner; or~~

~~(D) 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:~~

~~(G) a significant modification of the site plan;~~

~~(H) a modification of the number of units or bedroom mix of units;~~

~~(I) a substantive modification of the scope of tenant services;~~

~~(O) a reduction of 3 percent or more in the square footage of the units or common areas;~~

~~(P) a significant modification of the architectural design of the Development;~~

~~(Q) a modification of the residential density of at least 5 percent;~~

~~(R) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);~~

~~(S) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required; or~~

~~(T) any other modification considered significant by the Board.~~

~~(A) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.~~

~~(B) This section shall be administered in a manner that is consistent with §42 of the Code.~~

~~(C) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:~~

~~(D) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and~~

~~(E) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a~~

~~penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the~~

~~Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.~~

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the amendment request, the reason the change is necessary, the good cause for the change, financial information for the Department to evaluate the financial impact of the change, if the necessity for the amendment was reasonably foreseeable at the time of Application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule). ~~t~~The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report~~;~~.

(1) **Non-Material Amendments.** The Executive Director or designee may administratively approve all LURA amendments which are not defined as Material Amendments pursuant to paragraph (2), below. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division.

~~(8)~~ (2) **Material Amendments**. The Board must consider and approve a material amendment to the LURA in accordance with the following:

(A) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; ~~and~~

(B) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the draft notice within three (3) business days of receipt;

(C) Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director or Board;

(D) In the event that a Development Owner seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (i) and (ii) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(i) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. If the request is based upon financial feasibility, the lender and syndicator must submit written confirmation that the Development is financially infeasible without the adjustment in Units, and any affirmative recommendation by the staff to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(ii) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

~~(9) An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:~~

(3) **Preparation of Amendment.** Upon approval of a LURA amendment request, Department staff will ~~evaluate the amendment request and~~ provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located.

(4) **Compliance.** The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department.

~~The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:~~

~~(10) the Development Owner must submit a written request accompanied by an amendment fee (except for awards that are funded only through one of the Department's Direct Loan programs, which do not require a fee) as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;~~

~~(11) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;~~

~~(12)~~(1) ~~the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;~~

~~(1)~~(2) ~~the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and~~

~~(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.~~

(c) Amendments to Direct Loan Terms. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Board approval is necessary for any other changes prior to closing.

(1) extensions of up to 15 months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(7) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the

Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how

the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) ~~Notwithstanding the foregoing, a~~ A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new ~~members~~ Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible, with an Ownership Transfer packet, due to the sensitive timing and nature of this decision.

(3) ~~Exceptions to the full approval process include c~~Changes to the investment limited partner, non-~~c~~Controlling limited partner, or other non-~~c~~Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) ~~, or C~~c~~hanges resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner do not require advance approval but must be reported to the Department as soon as possible, due to the sensitive timing and nature of this decision.~~.~~

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein.

~~**(c)**~~ **(d) Removal Issues.** If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

~~**(a) Requirement**. All new members must be eligible applicants under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews). Department approval must be requested for any new member to join in the ownership of a Development. Exceptions to the full approval process include changes to the investment limited partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Changes in Developers or Guarantors must be addressed as non-material amendments to the application under 10.405 of this subchapter. Limited Partners or other Investor or Special Limited Partners or Affiliates who were acknowledged by the Department at the time of a previous transfer but were not subject to a full approval process because of Limited Partnership, Investor or Special Limited Partner roles with non-controlling interests in the Owner, will be subject to full ownership transfer review requirements in the event that the Limited Partner or other Investor or Special Limited Partner at any point moves to acquire any portion of controlling interest as a member of the Development Owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer.~~

~~The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.~~

~~(f)~~(e) **Transfers Prior to 8609 Issuance or Construction Completion.** Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add ~~parties deemed to have control~~ Principals[LL1]. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain such Control, unless approved otherwise by the Board. An Applicant, General Partner or Development Owner may not sell the Development in whole or voluntarily end its Control prior to the issuance of 8609s.

~~(g)~~(f) **NonProfit Organizations**. If the ownership transfer request is to replace a nonprofit organization within the Development Owner, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization or CHDO, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department's Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(a) the selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(b) the participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(c) the proposed purchaser meets the Department's standards for ownership transfers.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status, in either case, after the issuance of 8609's, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval) have been followed and approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(4) a list of the names and contact information for transferees and Principals;

(5) Previous Participation information for any new Principal[LL2] as described in §10.204(13)(b) of Subchapter C;

(6) agreements among parties associated with the transfer;

(7) a fully executed Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

(8) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(9) detailed information describing the organizational structure, experience, and financial capacity of the transferees and any Principal or Controlling entity;

(10) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(11) any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(g) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this part, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties, Past Due Fees and Underfunded Reserves. Any new Development Owner or new Principal of a Development Owner approved in the ownership transfer process must comply with all requirements stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner and its Principals, as on record with the Department, will be liable for any penalties or fees imposed by the Department, even if such penalty can be attributable to the new Development Owner or Principals, unless such ownership transfer is approved by the Department. In the event a Development undergoing an ownership transfer has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the proposed new Development Owner or Principals may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the

departing and/or incoming Development Owner or Principals as a condition to approving the Transfer.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

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MEMORANDUM

TO: Texas Department of Housing and Community Affairs

FROM: Cynthia Bast

DATE: October 15, 2015

RE: PUBLIC COMMENTS ON RULES – **CHAPTER 10, SUBCHAPTER E, ASSET MANAGEMENT RULES, SECTION 10.407**

On behalf of Locke Lord LLP and not any particular client of our firm, please find comments to draft Chapter 10, Texas Administrative Code ("**TAC**"), Subchapter E, Asset Management Rules, Section 10.407.

General Comment: Please find attached a proposed mark-up of Section 10.407 regarding the Right of First Refusal ("**ROFR**"). All of these comments are intended to assist TDHCA with implementing HB 3576, which made some fundamental statutory changes to the ROFR. These comments are based upon certain fundamental understandings:

- Pursuant to Section 6 of HB 3576, the statutory change applies to transfer of any ROFR property with an allocation of LIHTC before, on, or after the effective date of the act. Therefore, certain provisions of HB 3576 should apply to all LIHTC properties with a ROFR currently in existence:
  - A "Qualified Entity," as defined in HB 3576 may acquire any LIHTC property with a ROFR, even if the current LURA is not so extensive. Thus, I recommend that TDHCA implement a definition of "Qualified Entity" that is consistent with statute.
  - The additional notice provisions should be implemented, including: (1) an owner must notify both TDHCA and the tenants of its intent to sell the property (and as to the latter, such notification should be given even if a new owner has not yet been identified); (2) an owner must identify to TDHCA any Qualified Entity that

has a contractual ROFR outside the LURA; and (3) in conjunction with posting the ROFR property on its website, TDHCA must also notify any Qualified Entity identified by the owner as having a contractual ROFR.

- With these provisions of HB 3576 implemented, the only provisions that would not be applied to existing LURAs, absent an amendment, relate to the 180-day ROFR offer period.

I hope the attached comments are helpful and I am happy to discuss anything further if needed.

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners~~LURAs that provided an incentive for Development Owners~~ that agreed to offer a Right of First Refusal (ROFR) to a Qualified~~ ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c)of the Code or tenant organizations~~ Entity, as memorialized in the applicable LURA. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified ~~ROFR Organization~~ Entity without going through the ROFR process outlined in this section.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a conflict between the LURA and statute exists the Development Owner may request a LURA amendment to be consistent with any changes to Texas Government Code §2306.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under § 10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to § 10.405. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Entity~~, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity~~ that is considered an ineligible entity under the Department's~~ most recent Qualified Allocation Plan~~rules. In addition, ownership transfers to a Qualified ~~ROFR Organization~~ Entity ~~during~~ pursuant to the ROFR ~~period~~ process are subject to Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) ~~A right of first refusal~~ The ROFR process is not triggered if a Development Owner seeks ~~the~~ to transfer ~~is made~~ the Development to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

~~(C) Any additional ownership entities are subject to Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).~~

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified~~ ROFR Organization~~Entity or pursuant to subpart (a)(6) above, the Development Owner shall provide a notice of intent to the Department, to the residents, and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ~~ROFR Organization~~ Entity that has a ~~limited priority in exercising~~ contractual ~~a~~ ROFR to purchase the Development, the Development Owner must identify that entity to the Department and first offer the Property to this entity. If the ~~nonprofit e~~Qualified Entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the ~~notice of intent to sell the Property and the~~ ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met and will notify the Development Owner of its determination in writing. In the event that the ~~organization~~ Qualified Entity with the contractual ROFR is not operating or in existence at the time the Development Owner intends to sell,~~when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner~~ the provisions of this Section

shall apply to any proposed sale by the Development Owner.~~ Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price~~;

(2) documentation verifying the ROFR offer price of the ~~p~~Property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ~~ROFR Organization~~ Entity that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code conducted by a Third-Party;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the ~~nonprofit~~ buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ~~ROFR Organization~~Entity, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ~~ROFR Organization~~ Entity selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

(1) if the LURA requires a 90 day ROFR posting period, within 90 days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a ~~q~~Qualified ~~ROFR organization~~ Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a ~~q~~Qualified ~~ROFR organization~~ Entity is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the ~~nonprofit~~ Qualified Entity fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation

Review process pursuant to Chapter 1, Subchapter C of this part, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a ~~nonprofit~~ Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the 90 day period;

(D) if no bona fide offers are received during the 90 day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the Qualified Contract process~~ request a Preliminary Qualified Contract (if such opportunity is available under § 10.408)or proceed with the sale to a~~ for-profit buyer~~n entity that is not a Qualified Entity at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted ~~at least~~ no more than 2 years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. 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 within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified ~~Nonprofit Organization~~ Entity that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Entity that is a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified ~~Nonprofit Organization~~ Entity approved by the Department~~ or a tenant organization approved by the Department~~;

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the

Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ~~ROFR Organization~~ Entity or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the Qualified Contract process~~ request a Preliminary Qualified Contract (if such opportunity is available under § 10.408 or proceed with the sale to a ~~for-profit~~ buyer that is not a Qualified Entity at or above the ~~m~~Minimum ~~p~~Purchase ~~p~~Price.

(3) if the Development Owner has a LURA or has amended the LURA to require a 180 day ROFR posting period pursuant to Texas Government Code §2306.6725, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the notice of intent shall be given to the Department as described in this section. ~~Development Owner shall notify the Department and the tenants of the development of the owner's intent to sell. The Development Owner shall also identify to the Department any qualified entity that is the owner's intended recipient of the right of first refusal in the LURA, if applicable. As soon as practicable after receiving the Development Owner's notice, and if the owner has specifically identified any qualified entity that is the owner's intended recipient of the ROFR, the Department shall provide notice to any identified qualified entity of the owner's intent to sell the development and shall post the notice to the Department's website. The owner's notice of intent to sell shall be given within 180 days before the date upon which the Development Owner intends to sell the Development in order for the 90 day ROFR posting period to be completed prior to the intended sale.~~ The 180 day ROFR period referenced in this paragraph begins when the Department has received and approval all documentation required under subsection (c)(1) – (12) of this section. During the 180 days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first 60 day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a ~~q~~Qualified ~~e~~Entity that is controlled by a Community Housing Development Organization, and is approved by the Department;

(B) during the second 60 day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a ~~q~~Qualified ~~e~~Entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;

(C) during the last sixty (60) day period after notice of intent, with any other ~~q~~Qualified ~~e~~Entity that is approved by the Department;

(D) f, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the price that the Department determines to be reasonable from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at ~~a~~the Minimum Purchase ~~p~~Price ~~determined to be reasonable by the Department~~ were received from a Qualified ~~ROFR Organization or by the Department~~Entity, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may ~~pursue the Qualified Contract process~~ request a Preliminary Qualified Contract (if such opportunity is available under § 10.408 or proceed with the sale to a ~~for-profit~~ buyer that is not a Qualified Entity at or above the Minimum Purchase ~~p~~Price ~~determined to be reasonable by the Department~~;

(F) this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a ~~q~~Qualified ~~e~~Entity.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Develop_ment that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 and until September 1, 2015 is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. 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.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

(1) the best interests of the residents of the Development;

(2) the impact the decision would have on other Developments in the Department's portfolio;

(3) the source of the data used as the basis for the Development Owner's appeal;

(4) the rights of nonprofits under the ROFR;

(5) any offers from an eligible nonprofit to purchase the Development; and

(6) other factors as deemed relevant by the Executive Director.

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October 13, 2015

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2016 Multifamily Program Rules, as well as the Qualified Allocation Plan (QAP), the Underwriting and Loan Policy, and the Post Award and Asset Management Requirements that are currently subject to public comment. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's polic to submit onl recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations ere developed at a meeting ith the TAAHP Membership on October 1, 2015 in response to the rules approved for public comment by the TDHCA Governing Board on September 11, 2015.

Please note that while the following recommendations are numerous due to the large and diverse membership, there are several issues that generated significant amount of discussion among the TAAHP membership. I highlight those three issues here, in an effort to emphasize their importance to our membership and encourage TDHCA staff to give them serious consideration.

1. Reducing concentration. Under the current rules, applicants are often competing for sites within the same census tracts, which often results in developers paying a premium for land that is not necessarily the best real estate in terms of connectivit to amenities and services. Adding concepts like "same t pe development" to the tie breaker and to the underserved point categor and adding more tiering in terms of educational excellence are efforts to open up new census tracts to the competition.
2. Clarifying the competitive process. There are several new concepts in the QAP that are very vague in terms of how they will be applied. One example is the new category in the underserved point category for job growth. Another example is the new point category for applicants depending on whether the portfolios are characterized as either Category 1, 2, 3 or 4. There is a great deal of confusion as to which categories apply and the TAAHP membership requests clear guidance in order to make informed decisions in terms of the competition.
3. The Section 811 Program. TAAHP is opposed to the new one point advantage for placing Section 811 voucher holders in existing properties. We understand that TDHCA wants to house 811 voucher holders as soon as possible, but this provision reduces program participants' fle ibilit in doing so and, as drafted, only benefit a handful of program participants. As an example, one TAAHP member

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DAN KIERCE
RBC Capital Markets- Tax Credit Equity Group

DAVID MARK KOOGLER
Mark-Dana Corporation

MARK MAYFIELD
Texas Housing Foundation

JANINE SISAK
JSA Development Company, LLC

CHRIS THOMAS
CohnReznick LLP

RON WILLIAMS
Southeast Texas Housing Finance Corporation

Executive Director
FRANK JACKSON

with more than 25 properties with approximately 2,000 units has only one existing property that would qualify. Under this new rule, this applicant is now forced for point reasons to reserve this property for the 2016 round instead of using it to house the 811 voucher holders as committed under the 2015 rules. This result is the exact opposite of what TDHCA is trying to achieve. Please note that TAAHP has formed a sub-committee that has come up with alternative incentives for TDHCA staff to consider. We will be submitting those recommendations under separate cover.

With those comments as an introduction, please consider the following recommendations with regard to specific provisions of the rules:

Subchapter A – Definitions

Section 10.3(47) Elderly Development

TAAHP requests further clarification on why these new definitions are necessary.

Justification: There is general concern amongst the membership about the new Elderly Development Definition because most cities and other government funders are very sensitive to these definitions. An effort to further define these terms might lead to greater conflicts between programs.

Section 10.3 Placed in Service

TAAHP requests that a definition of Placed in Service be added and that the definition be consistent with the Internal Revenue Code Section 42 provision, which allows a building to be counted as "Placed In Service" if onl one unit in the building has received a certificate of occupancy. TAAHP also requests the TDHCA's carr over documentation be changed so that the language regarding Placed in Service is consistent with the Internal Revenue Code.

Justification: TDHCA's polic on placed in service should be consistent with the federal regulation.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(2)(c) Mandatory Community Assets

TAAHP requests that churches or places of religious worship be reinstated as a Mandatory Community Asset.

Justification: Churches are a public service to the surrounding communities. These institutions not only provide support for the spiritual and emotional needs and health of its members in the community, but also provide a myriad of supportive public services to the community. Such services include day care, meals on wheels, counseling, food pantries, immigration and free legal clinics, seminars on health and finances and emergency funds for items such as rent, utilities, medical expenses or car repairs.

Subchapter B – Site and Development Requirements and Restrictions

Section 10.101(a)(4)(B) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section regarding incidents of violent crime:

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(ii) The Development Site is located ~~in a census tract or within 1000 feet of a census tract~~ in an Urban Area and the rate of ~~Part I~~ violent crimes for the police beat as reported by the local police department is greater than 18 per 1,000 persons (annually) or as reported on neighborhoodscout.com."

Justification: Because neighborhoodscout.com provides inconsistent results, applicants should have the option of obtaining statistics directly from the police department. In those cases where obtaining statistics directly from the police department is difficult, neighborhoodscout.com can serve as the source. This either/or approach provides much needed flexibility for the applicant in obtaining the relevant information.

TAAHP also requests that TAAHP requests that the following section regarding blighted structures be deleted:

~~(iii) The Development Site is located within 1,000 feet of any census tract of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism, that they would commonly be regarded as blighted or abandoned.~~

Justification: This concept of "blight" is too subjective to administer in a consistent a .

TAAHP also requests that this subparagraph regarding schools that have not Met Standard be deleted:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

Justification: Because certain school districts in the larger urban areas struggle to meet the new standards, because they are indeed new standards, this section serves to redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff.

Section 10.101(a)(4)(E) Undesirable Neighborhood Characteristics.

TAAHP requests the following changes to this section:

(iii) The Development is ~~necessary to enable a state, a participating jurisdiction or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD-approved Conciliation Agreement, or a final and non-appealable court order~~ consistent with fair housing planning documents, such as an Analysis of Impediments or Assessment of Fair Housing, and with planning documents such as the cit 's or count 's HUD consolidated plan.

Justification: Larger cities, like the City of Houston, will not legally be able to provide letters stating that "the Development is necessar to compl ith its obligation to affirmativel further fair housing." This statement is too broad and too open to legal interpretation. Instead, cities will be more comfortable confirming compliance with their planning documents.

Section 10.101(a)(5) Common Amenities, Section 10.101(6) Unit Requirements, Section 10.101(7) Tenant Services

TAAHP request that the timeframe be restored to Compliance Period instead of Extended Use Period.

Justification: Extending program participants' obligations in these respects past the compliance period is inconsistent with TDHCA's current polic hich correctl commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff.

Section 10.101(b)(4) Mandatory Development Amenities

TAAHP requests the following changes to this section:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation)

Justification: Modern PTAC units are energy and cost efficient, and older existing buildings t picall don't have the plate height to allo for both central air and a reasonable ceiling height.

Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

Section 10.204(14) Non-Profit Ownership

TAAHP requests deletion of the following paragraph:

~~(C) For all Application. Any Applicant proposing a Development with a property tax exemption must include an attorney statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code. A proposed Pa ment in Lieu of Ta "PILOT" agreement must be documented as being reasonabl achieved."~~

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Justification: This adds unnecessary costs to the preparation of an application. Applicants relying on a property tax exemption should do so at their own risk.

Qualified Allocation Plan

Section 11.4(b) Maximum Request Limit

TAAHP requests a new limit for USDA applications of $750,000.

Justification: Most USDA developments are small so a $750,000 cap is appropriate.

Section 11.4(c) Tax Credit Requests and Award Limits

TAAHP requests the following paragraph 2 be deleted in its entirety:

(2) ~~The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents FMR's as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax Exempt Bond Developments, as a general rule, an SADDA designative would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicant must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.~~

Justification: The Internal Revenue Code allows the 30% boost in DDAs designation to be extended up to 365 days by allowing a project that applied for a bond reservation in one year to close the transaction in the next year. Section 11.4(c)(2) grants the 30% tax credit boost only when the bond reservation certificate is received in the same year as the HUD SADDA designation, which is subject to change annually. The housing site may no longer be included in a SADDA in the year following receipt of the private activity bond allocation reservation. The proposed rule will also force closing 4% bond transactions that access the increase amount of private activity bond allocation after the mid-August housing bond collapse by the end of the calendar year, unduly reducing the already very short 150 day closing timeframe.

Section 11.7 Tie Breaker Factors

TAAHP recommends the following changes to paragraph 4:

(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type ~~a development~~. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Section 11.9 Competitive HTC Selection Criteria

(b) Criteria promoting development of high quality housing

(2)(B) *Sponsor Characteristics. Previous Participation Compliance History*

While no consensus was reached on whether this point item should remain in the QAP, there was consensus on needing clarif ing language and direction from TDHCA's asset management and compliance division regarding how an applicant determines which category applies. Additionally, this point category should be tied to the category of an applicant as of March 1, 2016, so that there

is clarity within the competitive round in terms of scoring.

(c) Criteria to service and support Texans most in need

(4)(A)(ii) *Opportunity Index*

TAAHP requests that an instance of "77 or greater on index 1" change to "76 or greater on index 1."

Justification: The 2015 data released by TEA indicate the median Index 1 score for elementary to be 76 as opposed to the 2014 data which indicated median Index 1 score for elementary to be 77.

TAAHP also request that the poverty rate for opportunity index be increased to 20% for all areas outside of Region 11 where the poverty rate should stay at 35%.

Justification: This small change will add 227 or 4.3% (out of 5,263) additional census tracts to "High Opportunit " which will promote further de-concentration of awards. These new census tracts are still first and second quartile census tracts and in many cases have highly rated schools and are closer to services and town centers. This change also helps alleviate the issue that residents living in preservation properties are part of the poverty rate, making their own communities uncompetitive.

(4)(B) *Opportunity Index for Rural*

TAAHP recommends the following to be added to subsection (i) as further clarification on what "services specific to a senior population" might entail:

- Free or donation based hot meal service for a minimum of once daily 5 days a week (either delivered on site or offered off-site);
- Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primar care doctor's offices that accept Medicaid/Medicare, ERs and Hospitals.

(5) Educational Excellence

TAAHP recommends a third scoring tier for educational excellence:

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school either all with a Met Standard rating or any one of the three schools with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (2 points);

Justification: This is one area where TAAHP would like to see more point variation. Because it is very difficult to find sites where all three schools have an Index 1 score of at least 77, it would create more variation in scoring if there were other ways to receive partial points.

(6) Underserved Area

TAAHP members had differing opinions on this point category, although members reached consensus on the following language changes to subparagraphs (C),(D), and (E):

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development (2 points);
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a development that~~ which remains an active tax credit development serving the same Target Population (2 points);
(E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type ~~a Development that~~ which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);

Additionally, TAAHP requests more direction from staff about what would be required in terms of documentation for subsection (F) of this point category. Additionally, TAAHP proposes some language to this paragraph to include leased spaces in addition to newly construction space:

Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and or additional) office space and undergone initial hiring of its workforce . . . .

(7) Tenant Populations with Special Housing Needs

TAAHP requests that the new paragraph A that gives extra points for placing 811 residents in existing units be deleted:

~~Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an e isting Development's in the Department's Section 811 Project Rental Assistance Demonstration Program "Section 811 PRA Program" . In order to qualif for points, the e isting Development must commit to the Section 811 PRA Program at least 10 units or, if the~~

~~proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

Justification: A large percentage of developers, even the more established Texas developers with large portfolios, will not qualify for this point creating an unfair competitive advantage for only a handful of developers with a disproportionate number of general population deals.

(8) Aging in Place

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TAAHP recommends the following language in lieu of the language in the published rules.

An Application for an Elderly Development may qualify to receive up to three (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disabilit in Federall Assisted Programs and Activities" , the Applicant ill include (3 points):

a. "Walk-in" sho ers of at least 30" 60" in at least 50% of all residential bathrooms;
b. 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;
c. Chair height (17 – 19" toilets in all bathrooms; and
d. A continuous handrail on at least one side of all interior corridors in excess of five feet in length.

(B) The property will employ a full-time resident services coordinator on site for the duration of the Compliance Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (2 point):

i. A minimum of 16 hours per week for Developments of 80 units or less;
ii. A minimum of 24 hours per week for Developments of 81 to 120 units; and
iii. A minimum of 32 hours per week for Developments in excess of 121 Units.

9) Proximity to Important Services

TAAHP requests that the radius for rural deals be expanded to 3 miles.

Justification: Residents of tax credit housing in rural areas are reliant on their cars and often services like this are on the outskirts of town, near more major roadways.

(d) Criteria promoting community support and engagement

(5) Legislative Letters

TAAHP requests that positive letters of support from state representations receive +4 points, neutral letters receive 0 points, and letters of opposition will receive -4 points.

Justification: The total point range for these letters will be 8 points, rather than the current 16 point range, thereby making this point range of 8 consistent with the legislative intent of ranking it the lowest point category under the statute.

(7) Concerted Revitalization Plan.

TAAHP requests that this entire section revert back to the 2015 language.

Justification: This re-written section in the current draft is a concern with regard to its high level of subjectivity, especially with specific regard to the requirement that the problems identified have to be "sufficientl mitigated and addressed prior to the Development being placed in service." The current language will only benefit neighborhoods that are at the tail end of the revitalization efforts.

(e) Criteria promoting the efficient use of limited resources and applicant accountability

(2) *Cost of Development per Square Foot*

TAAHP requests that the cost per square foot limitations in this section should be increased by at least $10 per square foot.

Justification: The current draft does not adjust upward for recent construction cost increases which have been in the range of 8% to 12% per annum for the last three years.

TAAHP also requests the following language change:

(E)(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, if the development is considered a High Cost Development or located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

Subchapter D – Underwriting and Loan Policy

Section 10.302(d)(1) Operating Feasibility Income

TAAHP requests that this provision revert to the 2105 language which allowed for market rate rents to be set by the applicant at levels supported by the market study regardless of what percentage market rate units a development had.

Justification: There is no "one size fits all" approach to rents in the various Te as markets. The large urban markets, and not only Austin, are performing very differently than the smaller rural markets, which is why market studies are so important in determining market rents.

Section 10.302(d)(4)(D)(iv) Acceptable Debt Service Coverage Ratio Range

TAAHP requests that the language in this section revert back to the 2015 language.

Justification: TAAHP members do not understand why this change is proposed and would like to better understand the purpose.

Section 10.302(e)(7)(F) Developer Fee

TAAHP request that the following section be deleted:

~~The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

JUSTIFICATION: A new provision has been added that caps the Developer Fee to the amount determined at the original underwriting. We respectfull disagree that a developer's amount of work is the same regardless of the cost of the development. When construction costs are higher than anticipated, the developer has to do considerable more work in terms of value engineering and identifying additional soft costs. Furthermore, the payment of development fee is capped by available sources, so this new rule merely limits basis, placing the developer at higher risk for basis adjusters.

Subchapter E – Post Award and Asset Management Requirements

Section 10.402(g) 10 Percent Test (Competitive HTC Only)

TAAHP requests that the last sentence of paragraph (2) be deleted:

~~The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.~~

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.
TAAHP also requests that paragraph (5) be amended to require a non-material amendment to admit guarantors that were not identified as guarantors or principals on the Org Charts submitted at the time of Application:

If identified Guarantors have changed from the Guarantors or principals identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors or ~~members~~ principals must be reviewed in accordance with Chapter 1, Subchapter C of this part.

Justification: While we agree that adding new guarantors should require a non-material amendment, such amendment should not be required when the guarantor was listed on the original application as a principal on the owner organizational chart.

Section 10.402(j) Cost Certification (Competitive and Non-Competitive HTC and related activities Only)

TAAHP requests that this revert to 2015 requirement for a 15 year proforma instead of proposed 30 year.

Justification: a 15 year proforma is consistent with the application requirements, and past TDHCA policy at cost certification.

Section 10.405(a) Amendments to HTC Application or Award Prior to LURA recording or amendments that do not result in a change to LURA

TAAHP requests reinstatement of subpart (G) permitting a de minimis increase or decrease in the site acreage without requiring Board approval.

Justification: De minimis changes in sites often happen due to surveying discrepancies or unexpected developed related events, such as right of way adjustments. Such de minimis changes have been handled effectively through the administrative amendment process and should not require board approval, which is time consuming for both program participants and for program staff.

TAAHP request deletion of new subpart (H) defining the following as a material alteration requiring Board approval:

~~Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required~~

Justification: Increases in development costs and changes in financing occur frequently and should be handled administratively as they have been handled in the past.

Section 10.406(d)(3) and (4) Ownership Transfers, Non-Profit Organizations & HUBS

TAAHP membership appreciates the language changes in the proposed rules that provide for greater flexibility in cases where an award was not made out of the non-profit set-aside.

We thank you for your time and consideration of these recommendations. Please note that representatives from the TAAHP QAP committee are happy to meet with your staff in order to discuss these recommendations fully. I have already reached out to Brent Stewart and Tom Gouris to set up a meeting to review the new underwriting rules and discuss possible alternatives to the problematic sections.

Thank you for your service to Texas.

Sincerely,

Janine Sisak
Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Tom Gouris – TDHCA Deputy Executive Director for Housing Programs
Patricia Murphy – TDHCA Chief of Compliance
Brent Stewart – TDHCA Director of Real Estate Analysis
TAAHP Membership

3

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October 14, 2015

Kathryn Saar and Tom Gouris
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2016 QAP AND PROPOSED 2016 UNDERWRITNG RULES

Dear Kathryn and Tom,

We offer the following comment on the published 2016 Draft QAP:

1. **Tenant Populations with Special Housing Needs—11.9(b)(2):**

We support a methodology whereby tax credit developers with experience and a track record of excellence in compliance is rewarded. The 2015 QAP offers a *PENALTY* for developers with a bad track record, however, the action of an excellent performer is treated the same as a developer that has *ABSOLUTELY NO TRACK RECORD* of performance at all in the tax credit industry. This TDHCA policy of ignoring good performance runs completely contradictory to the private sector, as an excellent record of performance is the most important factor private lenders and investors consider in evaluating a proposed development. It is time TDHCA properly take into account this crucial evaluation factor and use points to incentivize good behavior. However, we believe the current proposal in the draft QAP still does not properly address the problem, as the proposed point category again only penalizes bad behavior and puts experienced developers with excellent track records in the same boat as developer with no record of performance whatsoever in the complex world of tax credit development. We propose the following language change to this point item:

Previous Participation Compliance History (up to 2 points):

(i) *The portfolio of the Applicant has a compliance history of a category 1 as determined in accordance with 10TAC 1.301, related to Previous Participation (2 points), or*

(ii) The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10TAC 1.301, related to Previous Participation (1 point)

The definition of the term "Applicant" in the rules allows for a partnership with an experienced developer for a developer without a track record who seeks to receive the point item. This is common practice in the private sector world—if an entity has *NO EXPERIENCE* in apartment development, a private sector bank or investor would look long and hard before approving a proposal from that entity (probably to a much greater extent than 1 or 2 points in 100-point evaluation matrix) and would likely suggest some type of joint venture or partnership with an entity that not only has experience, but a good track record. The point item as we propose it brings TDHCA evaluation in line with the private sector world of finance, which has become extremely difficult to navigate through since the 2008 financial crisis.

2. **Criteria to serve and support Texans most in need—11.9(c)(7)**

We understand and support the Department's efforts to place 811 units in existing portfolios due to time concerns with placed-in-service deadlines and other risks of relying primarily on proposed developments to place 811 units. We support language giving a minimal 1 point incentive to developers willing and able to place 811 tenants in qualifying existing units. We also support other incentives, such as increasing developer fees to 20% or shortening extended use periods by 5 years as proposed by TAAHP to accomplish this Department goal as well.

We offer the following comments regarding the published 2016 Draft of Subchapter C—Underwriting and Loan Policy:

1. **Designation as Rural or Urban—10.204(5)(B):**

We support this proposed language. It is well thought-out and in accordance with statute. We appreciate staff's research into this item and its invitation for feedback during the 2015 roundtable process.

We offer the following comments regarding the published 2016 Draft of Subchapter D—Underwriting and Loan Policy:

1. **Market Rents—10.302(d)(1)(A)(i):**

We understand the Department's concern with trying to underwrite market rents in low-income developments, as the "stigma" associated with low-income units can affect the amount of rent charged on market units in the same development. However, our private sector underwriters are currently using a 10% increase over 60% AMFI rents in developments we have recently been awarded. We feel that this is a reasonable assumption, and we have been able to achieve those rents thus far in our 2 mixed-income awards from 2013 that have recently been placed in service (North Desert Palms and Verde Palms). Granted, each of those deals have over 34% market units, but in the El Paso market, where we work exclusively, the low-income units do not carry the same "stigma" as is possibly seen in other markets. We propose that the Department look to the private sector lender and syndicator community for guidance in this area for each market, as markets in Texas can vary greatly due to differences in what is going on with each local economy. The Department has wide latitude to accept or reject market rents as proposed in applications as per the current rules, hence, we oppose any rule change to this category.

2. **Developer Fee—10.302(e)(7)(A):**

We understand, through various roundtables held by Department staff, that this rule change is precipitated by the notion that Public Housing Authority ("PHA") Rental Assistance Demonstration ("RAD") projects are at a much greater risk of obtaining funding, due to the uncertainty of the financing. In the same line of reasoning, Developments with higher debt are also of a much greater risk to the Developer. Further, a rule that changes the playing field to benefit ONLY PHAs is unfair to private sector developers. Hence, we propose the following rule change to bring riskier, high-debt deals into the same preferred treatment as PHA/RAD deals:

> *For Developments with at least $25,000 per Unit in conventional debt that will not come from an Affiliate of the Developer or Applicant, nor from a Related Party of the Developer or Applicant, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.*

3. **Developer Fee—10.302(e)(7)(F):**

We understand the Department's concern regarding "rewarding" a developer who greatly underestimated costs at the time of application. However, in the development world, cost increases on items beyond a developers control are commonplace. Things such as impact fees and permit fees are constantly

inflated well-beyond the cost of inflation by local governments and while some of us go to great lengths to fight these fees, it is still well beyond our control. Likewise the costs of goods and services can be greatly influenced by things such as construction in China or OPEC actions regarding the world oil market as recent history has shown us. **We propose a reasonable increase in developer fee of up to 15%** if it can be proven at cost certification that such a cost increase was justified and beyond the Developer's control**Developer Fee—10.302(**

We offer the following comments regarding the published 2016 Draft of Subchapter E—Post Award and Asset Management Requirements:

1. **Cost certification—10.402(j):**

We do not understand the reasoning behind changing the requirement of a 15-year pro-forma to a 30-year pro-forma and **we strongly oppose this change**. There is no reasoning given in the Department's presentation in the Board book as with other changes in this section, nor any discussion of this proposed major change during any of the 2015 roundtable discussions. Thus, we hope that the insertion of 30 years is possibly a typo. Our company had a long debate before the TDHCA Board over this issue back in 2006 on our Mission Palms development, at which time the Board decided unanimously that a 30-year pro-forma was not reasonable to use for a variety of reasons (i.e., non-HUD financing typically has either a 15 or 18 year term, so the debt must be refinanced at that time anyway on the vast majority of 9% tax credit deals, so the debt structure will change at that time anyway). In a low-income, low rent area like El Paso and the rest of the Texas border, pro-forma rent projections beyond year 15 often create a situation where operating expenses have increased to the point of a DCR of below 1.15 and creates an unfair situation for border developments—a concern that if realized, would be addressed by the private sector lender and developer during a year 15 or year 18 refinancing. However, if the Department wishes to impose this new standard on TDHCA-financed or HUD financed developments ONLY then we are not opposed.

This concludes our comments for the 2016 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV
President

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TX-CAD 2016 Asset Management Rules Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2016 Asset Management Rules. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

1. **Section 10.405(4)(H) Amendments and Extensions**

   Language was added to the rules that would require an Applicant to get an amendment if there are significant increases in development costs or changes in financing.

   We oppose the language for three reasons: 1) With no precise definition of "significant" an Applicant would have no way to determine if an amendment is required. 2) Development is a fluid process and changes in the market, code interpretations, and site development issues can all cause increases at any time before or after closing. Having to get an amendment prior to closing will serve to delay closings and put the deal in greater jeopardy. Having to go back for an amendment after closing for something that cannot be addressed, changed, or fixed by the Department adds additional paperwork and effort that serves no meaningful purpose. 3) The Developer, Lender, and Syndicator are responsible for determining the feasibility of a deal after award. Together they take the best information available and make the decision to proceed or not. Post construction, the lender and/or syndicator enforce review and approvals of all changes either of a single dollar amount or a cumulative dollar amount thereby providing sufficient oversight to the cost of the development. Since tax credits are capped upon award, there is not risk to the department for these additional costs or financing changes.

   Because of this we recommend deletion of the language below in its entirety:

   ~~(H) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required;~~

   Further discussion with staff on this issue indicates that the main concern with financial changes that may impact feasibility are with regard to TDHCA Direct Loans. With this in mind, we also suggest the following language change.

   (H) For developments with Direct Loans, if there are ~~S~~significant increases in development costs, ~~or~~ changes in financing, circumstances that might ~~that may affect the~~

~~financial feasibility of the Development or~~ result in reductions of credit or other changes in the financing conditions such that the financial feasibility of a Development could be affected, then ~~such that~~ a ~~full~~ re-evaluation and analysis by staff assigned to underwrite the application~~s~~ is required.

For all other developments, if there are ~~d;~~significant increases in development costs, changes in financing, circumstances that might result in reductions of credit or other changes in the financing conditions such that the financial feasibility of a Development could be affected, the applicant should provide a notification to the agency along with a certification from the equity provider and/or lender certifying that the development remains financially feasible and that they intend to continue their investment in the transaction.

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October 15, 2015

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: Draft 2016 Qualified Allocation Plan and Multifamily Rule Comments

Dear Mr. Irvine,

Thank you to you and your staff for your continued efforts to dialogue with the stakeholders related to the staff drafts of the 2016 Qualified Allocation Plan (QAP) and Multifamily Rules (Rules). Please accept the following comments on behalf of Marque Real Estate Consultants (MREC). Comments 1, 3, 5-8, 10, 13, 15, 16, and 18 mirror comments made by the group TX-CAD and comments 2, 3, 8, 10-17 mirror comments made by TAAHP.

1. **QAP, §11.7(3) Tie Breaker Factors**
   MREC suggests a change to the third tie breaker in order to add clarity to how the tie breakers will be applied across deal types. As written, it is unclear how a tie between multiple applications representing general population and elderly developments would be treated under §11.7(3). Therefore, we suggest that the third tie breaker apply to all developments, not only general population developments. Suggested language:

   (3) ~~For competing Applications for Developments that will serve the general population, t~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for "choice" districts) the closest.

2. **QAP, §11.7(4) Tie Breaker Factors**
   Additionally, MREC suggests a revision to the fourth tie breaker to evaluate the distance of proposed developments to the nearest existing tax credit development serving the same population type. Suggested language:

   (4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

3. **QAP, §11.9(c)(4) Opportunity Index**
Currently an index 1 score of 77 is being used as the standard for elementary schools to meet the definition of a high opportunity area. In previous years this was the statewide median for both elementary schools and all schools combined. This year, the elementary school median index 1 score has dropped to 76. We believe that because this scoring item is directly tied to elementary schools, that the statewide median elementary school index 1 score of 76 should be used. Suggested language:

(A) For Developments located in an Urban Area…
(i) The Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (7 points);
(ii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating, has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);
(iii) The Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement (5 points);
(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 76 ~~77~~ or greater on index 1 of the performance index, related to student achievement.

4. **QAP, §11.9(c)(5) Educational Excellence**
As stated above related to Opportunity Index, data released by the Texas Education Agency (TEA) in 2015 shows that the statewide elementary school index 1 score has decreased to 76. We think it is appropriate to use an index 1 score of 76 for Opportunity Index. Additionally, MREC thinks it is most logical to have a single index 1 score for elementary schools across scoring criteria, which is why we are suggesting that the change in elementary school index 1 score flow through to Educational Excellence. We are not suggesting a change to the index 1 score used for middle or high schools. Suggested language:

(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 For Developments in Region 11, the

middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (5 points); or

5. **QAP, §11.9(c)(6)(C) Underserved Area (Never received an allocation)**
In an effort to ensure that communities have the opportunity to have a broad range of populations served, we believe that this scoring item should only take into account developments of the same type. Proposed language change below:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

6. **QAP, §11.9(c)(6)(F) Underserved Area (Employment Growth)**
While we support the concept, we cannot support the language as written. Any proof associated with this item needs to be completely objective and available to the public at large therefore we recommend removing this scoring criteria.

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point);~~

7. **QAP, §11.9(c)(6)(G) Underserved Area (Population Growth)**
Accurate demographic information related to the growth at the census tract level does not exist. We believe that growth at the Place level is a more appropriate indication of growth of a community as a whole. Proposed language change below:

(G) A ~~census tract~~ Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years. ~~provided the census tract does not comprise more than 50% of the county.~~ .

8. **QAP, §11.9(c)(7)(A) Tenant Populations with Special Needs**
A new category within this scoring item provides the highest level of points to those Applicants who commit units to the 811 program within an existing property. While we understand that TDHCA is seeking to place 811 units quickly, the result of this new scoring category is to give a competitive advantage within the current application round based on a factor unrelated to the development being proposed within the current application. We believe this new item will have the effect of discriminating against developers solely on the basis of the siting of previous developments – those who have specialized in rural, senior, or smaller MSAs would not be eligible for these points. It gives an advantage to certain developers, not for merit, but luck of the draw for having built previously in specific urban areas.

The Department can instead offer incentives outside of the application cycle to encourage participation in the 811 program for existing portfolios. Because of this we recommend deletion of the language in its entirety:

~~(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.~~

9. **QAP, §11.9(d)(7)(A) Concerted Revitalization Plan**

We have concerns about the subjectivity of language in the rule and feel that more specificity of what is required and will be approved would be helpful. Additionally, in order to support the revitalization efforts of larger cities we are suggesting that a city be allowed to designate more than one development as significantly contributing to revitalization. We suggest the following changes:

(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an ~~distinct~~ area that ~~was once vital and has lapsed into a situation requiring~~ has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~ adopted. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems but smaller than the municipality or county as a whole. The concerted revitalization plan ~~that~~ should meet~~s~~ the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been i~~n~~dentified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of ~~violent~~ crime~~, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances~~ or overt illegal activities; and/or

(-c) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.

(III) Staff will review the ~~target area for presence of the problems identified in the~~ plan ~~and~~ for targeted efforts within the plan to address ~~those~~ the problems identified within the plan. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;
(-b-) developing health care facilities;
(-c-) providing public transportation;
(-d-) developing significant recreational facilities; and/or
(-e-) improving under-performing schools.
However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have~~ identify sufficient and~~,~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission. ~~been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official ~~providing documentation of measurable improvements within the~~ certifying the identified revitalization area, that the development is located within the revitalization area, and that the plan meets the requirements of subsections I, II and IV of this section; ~~based on the target efforts outline in the plan;~~ and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified by the city or county as contributing ~~most~~ significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may ~~only~~ identify no more than three ~~one single~~ Developments during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at preapplication). If multiple Applications submit resolutions under this subclause from the same Governing Body, then not more than three ~~none~~ of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing ~~most~~ significantly to concerted revitalization efforts.

10. **QAP, §11.9(e)(2) Cost of Development Per Foot**
Construction costs have increased significantly over the last three years and we request that the cost per foot figures be increased by $10 per square foot to reflect these increases.

11. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iii) Undesirable Neighborhood Characteristics**
The additional criteria to evaluate blight is too subjective to administer in a consistent way. Additionally, this criteria may result in the ineligibility of sites in high opportunity areas or revitalization areas that are rapidly improving simply due to the presence of a de minimis number of blighted structures. Therefore we recommend the deletion of this language in its entirety:

~~(iii) The Development Site is located within 1,000 feet of multiple vacant structures visible from the street, which have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.~~

12. **Multifamily Rules, Subchapter B, §10.101(a)(4)(B)(iv) Undesirable Neighborhood Characteristics**
Certain school districts in the larger urban areas will struggle to meet the new TEA threshold standards, because they are indeed new standards. As a result, this section will redline large swathes of major metropolitan areas. While the inference of undesirable neighborhood characteristics is rebuttable, this rule will cause additional administrative burden both for the program participants and the program staff. Therefore we suggest a deletion of this language in its entirety:

~~(iv) The Development Site is located within the attendance zones of an elementary school, a middle school and a high school that does not have a Met Standard rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.~~

13. **Multifamily Rules, Subchapter B, §10.101(b)(4) Mandatory Development Amenities**
We request that central air not be required for acquisition/rehabilitation properties where the units currently operate with PTACs. Modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and reasonable ceiling height. Suggested language change:

(L) All units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units and for all units in Rehabilitation properties where the units were heated and cooled with Packaged Terminal Air Conditioners prior to the Rehabilitation); and

14. **Multifamily Rules, Subchapter B, §10.101(b)(5) Common Amenities, §10.101(b)(6)(B) Unit and Development Features, and §10.101(b)(7) Tenant Supportive Services**
Proposed 2016 language requires program participants' obligations past the compliance period. This is inconsistent with TDHCA's current policy which correctly commits limited state resources to confirming compliance during the compliance period. Extending this type of compliance through the extended use period will create further administrative burden, both for the program participants and the program staff. Therefore, we request that the timeframe under each of these sections be restored to the compliance period rather than the extended use period.

15. **Multifamily Rules, Subchapter D, §10.302(d)(1)(A)(i) Market Rents**
We recommend a deletion of the new language which limits underwritten market rents to the 60% AMI Net Program Rent. This new policy is a one size fits all approach to a problem observed by the REA Division in a limited scope, and this type of uniform limitation does not appropriately evaluate developments across the state. Therefore, we suggest that TDHCA rely upon the market study it requires applicants to have prepared. Suggested language is as follows:

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. ~~For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.~~

16. **Multifamily Rules, Subchapter D, §10.302(e)(7)(F) Developer Fee**
We respectfully disagree with the concept of fixing developer fee at a specific amount at the time of Application. With increased cost, comes increased risk, increased guarantees, and reduced margins. The developer fee is the deal's contingency and limiting this buffer only serves to make a deal weaker financially. Because applications are submitted almost a year in advance to breaking ground, it makes little sense to penalize the developer for market forces that they cannot control. Furthermore, given the limited time frame from publication of rules to submission of an application it is not feasible or reasonable to expect a developer to fully understand all of the potential challenges, issues, and difficulties a deal may encounter during its life cycle. The IRS and TDHCA rules set out what is a proper incentive for developers to produce affordable housing and we do not believe it is in the best interest of the program to artificially limit the fee at the time of application. Because of this we recommend deletion of the language below in its entirety:

~~(F) The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer Fee but fees greater than 15% will be reviewed for undue enrichment.~~

17. **Multifamily Rules, Subchapter E, §10.402(j)(3)(B)(xxiv)**
We requests that this revert to 2015 requirement for a 15 year pro forma instead of proposed 30 year pro forma for consistency with the application requirements, and past TDHCA policy at cost certification.

18. **Multifamily Rules, Subchapter E, §10.405(4)(H) Amendments and Extensions**
Language was added to the rules that would require an Applicant to get an amendment if there are significant increases in development costs or changes in financing.

We oppose the language for three reasons: 1) With no precise definition of "significant" an Applicant would have no way to determine if an amendment is required; 2) Development is a fluid process and changes in the market, code interpretations, and site development issues can all cause increases at any time before or after closing. Having to get an amendment prior to closing will serve to delay closings and put the deal in greater jeopardy. Having to go back for an amendment after closing for something that cannot be addressed, changed, or fixed by the Department adds additional paperwork and effort that serves no meaningful purpose; 3) The Developer, Lender, and Syndicator are responsible for determining the feasibility of a deal after award. Together they take the best information available and make the decision to proceed or not. Post construction, the lender and/or syndicator enforce review and approvals of all changes either of a single dollar amount or a cumulative dollar amount thereby providing sufficient oversight to the cost of the development. Since tax credits are capped upon award, there is not risk to the department for these additional costs or financing changes. Because of this we recommend deletion of the language below in its entirety:

~~(H) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by staff assigned to underwrite applications is required;~~

We respectfully submit these suggested changes for staff's consideration and inclusion in the final 2016 Qualified Allocation Plan and Multifamily Rules. Please do not hesitate to contact me with any questions.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker
Marque Real Estate Consultants

Cc: Tom Gouris, TDHCA
Marni Holloway, TDHCA
Teresa Morales, TDHCA

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October 15, 2015

Mr. Tom Gouris – VIA Email
Ms. Teresa Morales – VIA Fax 800-733-5120
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: 2016 Multifamily Program Rules Proposed QAP Comment

Dear Mr. Gouris and Ms. Morales:

Bank of America Merrill Lynch has reviewed the referenced document and we would like to provide the following comments as noted below.

<u>Section 10.302 (e) (7) (F) – Developer Fee</u>
This section seeks to limit the developer fee to 15% of original underwriting. Bank of America is not in agreement with this clause.

We believe the developer fee is as follows:

- Incentive for qualified developers to develop properties that would not normally be developed. Time and effort in developing these types of properties is more cumbersome than a standard market rate development.
- This fee is used by lenders to balance the sources and uses; with deferral of a portion to cover unforeseen construction events and timing gaps based on equity pay-in schedules.
- Limiting the developer fee could impact the development's overall eligible basis

Recommendation for language:
Delete - **Section 10.302 (e) (7) (F) – Developer Fee**

<u>Section 10.405 (a) (4) (H) – Amendments and Extensions</u>
This section seeks to require staff to do a full re-evaluation and analysis should development costs or changes in financing that may affect the financial feasibility of the development or result in reductions of credit or changes in conditions.
We believe that changes to the feasibility of the development would be handled in the following manner:

- The lender(s) and investor are monitoring to make sure the development remains financially feasible.

- The staffs of the Lender and Investor are trained to monitor changes in the development proforma, sources and uses. This provision as currently stated would burden Department Staff.
- The Lender and Investor do not want the Department's re-evaluation to cause construction delays and jeopardize placed in service requirements.

Recommendation for language:
Add language that will require a letter from the lender stating that the development will remain financially feasible.

Example Language – (H) Significant increase in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that the developer will advise, in writing, the Department Staff, and provide a Lender and or Investor (Syndicator) letter with a statement of financial feasibility.

We commend the staff in requesting public comment and all of their efforts in the transparency of the agency. Should you have any questions, please do not hesitate to contact me at 214-209-3219.

Sincerely,

Bank of America Merrill Lynch

Valerie A. Williams

Valerie A. Williams
Bank of America Merrill Lynch
901 Main Street, 20th Floor
Dallas, Texas 75202

7

ENHANCING COMMUNITIES
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PeopleFund

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Executive Director

October 15, 2015

Mr. Tim Irvine
Ms. Marni Holloway
Texas Department of Housing and Community Affairs
Attention: Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Tim and Marni:

The Texas Association of Community Development Corporations appreciates the opportunity to address some of our members' concerns regarding the 2016 Draft Rules. We are especially appreciative of the Department's availability to our organization and willingness to work with us and all other stakeholders.

<u>Multi-Family Rules</u>:
10.901 Application Fee: TACDC members are opposed of changing the language regarding the Application Fee for nonprofit organizations from "will receive a discount of 10% " to "may be eligible to receive a discount of 10%". We feel the language should remain as previously stated in the rules to provide a small, but meaningful incentive to nonprofit developers.

10.101 Site and Development Requirements and Restrictions- Use of Neighborhoodscout.com
TACDC members are uncomfortable with the agency's requirement to use neighborhoodscout.com to determine crime rate and statistics within the same census tract or within 1,000 feet of the proposed development site.

Our concerns are twofold: First as proprietary software, we are unsure how the website owners collect, analyze, and report data across a city. Second, a few of our members have tried to replicate and reconcile the data reported in neighborhoodscout.com with publically available data from their police department and they were unable to do so. In some instances, the rates of violent crime have been misreported to a large degree and in other cases when comparing crime rates across different neighborhoods, neighborhoodscout will report that one neighborhood has more violent crime compared to another when the police data says just the opposite. TACDC members suggest the agency not rely on this website for purposes of TDHCA's multifamily programs.

10.101 Undesirable Neighborhood Characteristics – Schools
TACDC members support National Church Residences request to remove from threshold the requirement that elementary, middle and high schools must achieve the Met Standard rating of the Texas Education Agency. This additional barrier ensures that no new quality affordable housing is constructed in gentrifying urban areas. Furthermore, this shortsighted rule does not take into account Supportive Housing developments for individuals (100% studio and 1 bedroom) that only lease to adults, who have no need or use for a higher performing school. At the very

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least, the Elderly exclusion should be for ALL Elderly Developments, not just "limitation" as all Elderly Developments are designed and intend to serve Elderly who do not use primary schools.

Qualified Allocation Plan:
11.9 Aging in Place. (§2306.6725(d)(2), TACDC members are pleased to see the inclusion of points for hiring an onsite service coordinator. However, our members have a concern that the effectiveness of the service coordinator will be diminished if the person is part of the property management team. TACDC members request clarification that the person is a dedicated service coordinator and is not part of the property management team to help ensure the effectiveness of the service coordinator.

11.9 Concerted Revitalization Plan: TACDC supports the comments of Houston LISC regarding this section and generally concurs in the proposed revisions to Subsection (i) (I-III). These dictate that the concerted revitalization plan must have been adopted by the municipality or county in which the site is located, that the problems identified in the plan be identified via a public process, and what problems and elements generally should be considered in the plan.

Like Houston LISC, TACDC does not support the requirements of Subsection (i) (IV) that the funding for implementation of the plan be such that the problems identified in the plan be solved prior to the Development being placed in service. As proposed, this requirement would mean that investment in affordable housing would come very near the end of the revitalization process and not before. While we would concur that investment in affordable housing should not necessarily occur at the beginning of the revitalization process moving it to the end (1) negates the positive impact affordable housing development can have on an area that is on a positive revitalization trajectory and (2) may make impractical the purchase of the land for an affordable housing development project due to rising land costs in an area that is at the end of its redevelopment cycle.

We believe the language used in the most recent QAP (2015) is more appropriate. This language dictates that "the community revitalization plan must already be in place" and that "funding and activity under the plan has already commenced".

We would therefore propose that Subsection (IV) be revised to read as follows:

(IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timeline. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be mitigated within a period of time commensurate with the plan's timeline prior to or after the Development has been placed in service.

Asset Management Rules:
Similarly to our concerns under 11.9(b)(2) regarding Sponsor Characteristics, TACDC members are concerned that 10.406(d) under the Asset Management Rules may encourage the removal of participating nonprofit organizations from the

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development ownership structure without cause and beyond the legislative intent of HB3567 regarding changes to the Right of First Refusal when selling properties. We encourage staff to look at additional safeguards to protect the ownership interest of nonprofits materially participating in joint ownership agreements.

Thank you for considering our concerns with the 2015 Draft Rules and our members will work with staff during the public comment period to suggest improvements to the final rules.

Best regards,

Matt Hull
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