2008 Draft Qualified Allocation Plan and Rules Public Comment

Comment #	Commenter
1	Alamo Housing Authority, Mary Vela
2	Barry Kahn, Hettig/Kahn Holdings, Inc
3	Catellus Development Group, Francie Ferguson (Austin Public Hearing)
4	Catellus Development Group, Matt Whelan (Written Comment and Austin Public Hearing)
5	Charter Builders, R.J. Collins
6	CHS, Kelly Kent
7	Churchill Residential, Inc., Tony Sisk
8	City of Brownsville Planning Department, Lucy Garza (Brownsville Public Hearing)
9	City of Brownsville, Ben Medina, Planning Committee Development Director (Brownsville Public Hearing)
10	City of El Paso, Department of Community Development, Bill Lilly (El Paso Public Hearing)
11	City of Fort Worth, Charlie Price, Housing Program Manager (Dallas Public Hearing)
12	Coats | Rose, Barry Palmer
13	Coats | Rose, Scott Marks (Austin Public Hearing)
14	Community Partnership for the Homeless, Frank Fernandez (Written Comment and Austin Public Hearing)
15	Don Youngs, The Youngs Company
16	Doublekaye Corp., Gary Kersch
17	El Paso Coalition for the Homeless, Susan Austin (El Paso Public Hearing)
18	Flores Residential, LC, Apolonio Flores
19	Foundation Communities, Walter Moreau
20	Ginger McGuire, Lancaster Pollard
21	Greater Greenspoint District, James Curry and Jack Drake
22	H.A.V.E. Association, Daisy Flores
23	Housing Authority of the City of Kingsville, Cory Hinojosa
24	Housing Authority of the City of Pharr, Janie Martinez
25	Housing Authority of the City of Texarkana, Richard Herrington, Jr.
26	Jane Polk Sinski, Individual
27	Jim Walker, Individual (Austin Public Hearing)
28	Kathi Zollinger, Individual (Written Comment and Houston Public Hearing)
29	Katy Area Economic Development Council, Lance LaCour
30	Katy Independent School District, Superintendent Alton Frailey
31	La Joya Housing Authority, J.J. Garza
32	Locke Lord Bissell & Liddell LLP, Cynthia Bast
33	Mark-Dana Corporation, David Koogler
34	Martin Riley Associates - Architects, P.C., Jackie Martin, and Hollis Fitch
35	McAllen Housing Authority, Joe Saenz
36	NRP Group, Debra Guerrero
37	Realtex Development Corporation, Rick Deyoe (Written Comment and Austin Public Hearing)
38	Representative Bill Callegari (Written Comment and Houston Public Hearing via Gracie Espinoza)
39	Representative Eddie Rodriguez
40	Rural Rental Housing Association of Texas ("RRHA"), Jeff Crozier
41	San Antonio Housing Authority, Henry Alvarez
42	S.Anderson Consulting, Sarah Anderson (Written Comment and Austin Public Hearing)
43	Shackelford Melton & McKinley, Benjamin Halpern
44	Texas Affiliation of Affordable Housing Providers ("TAAHP"), Jim Brown
45	Texas Legal Services Center ("TLSC"), Randall Chapman and Carrie Tournillion
46	Texas National Association of Housing and Redevelopment Officials ("Texas NAHRO"), James Hargrove
47	Tropicana Building Corporation, R.L. "Bobby" Bowling IV (Written Comment and El Paso Public Hearing)
48	United States Department of Agriculture Rural Development, Scooter Brockette
49	Viola Salazar, Individual
	Austin Public Hearing Transcript (Commenters 3, 4, 13, 14, 27, 37, 42)
	Brownsville Public Hearing Transcript (Commenters 8, 9)
	Dallas Public Hearing Transcript (Commenter 11)
	El Paso Public Hearing Transcript (Commenters 10, 17, 47)
	Houston Public Hearing Transcript (Commenters 28, 38)

COMMENTS ON 2008 DRAFT QAP

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

Section 50.3(55)(c) (page 7 of 84) needs to be revised to allow at least one unit with more than 2 bedrooms if occupied by the property manager or a maintenance employee.

Section 50.3(62) (page 8 of 84) needs to show that a neighborhood organization includes a Residents Council.

The definition of "Rehabilitation" in Section 50.3(80) (page 10 of 84) was broadened to include **reconstruction** of demolished units on the same site. The definition needs to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features such as environmental issues or location in a flood plain, conditions in the area surrounding the project adversely affect the health or safety of the residents or other factors make the site unsuitable for housing or the feasible operation of the project, or another location is in the best interest of the residents (e.g., closer to amenities or lower density by a larger site), or for other reasons acceptable to the Department. In addition, reconstruction of a larger number of units than previously existed should be allowed if the site's size allows for additional units and the additional units are restricted for occupancy by renters with incomes at or below 50% of median income.

Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area where the proposed project is located. A similar provision should be made for nonprofit

participation regarding their bylaws and articles of incorporation not allowing such participation.

Section 50.6(d) Credit Amount (page 17 of 84), unfairly proposes to impose the $2 million limitation to a Housing Authority and nonprofit entities based on individual board members and executive directors participation in other applications. It is unfair to count the amount of a volunteer board member of a housing authority or a nonprofit entity who may also be a developer in their private business that is unrelated to the housing authority or nonprofit entity or vice verse. It is also unfair to count the amount of an application by an unrelated entity simply because an executive director may serve as a board member of the unrelated entity. This section needs to be revised so that an application(s) by unrelated entities or applicants do not count for the $2 million limitation. Similarly, the $2 million limitation should not apply a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to Qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Section 50.7(b)(3) (page 20 of 84) correctly deducts the 15% set aside for at-risks projects from the state ceiling prior to the application of the regional formula.

Section 50.9(c), Adherence to Obligations (page 25 of 84), should be revised as follows (*red Language denotes suggested changes):*

2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
(b) For the second violation, a fine of $50,000, payable to the Housing Trust Fund;
(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

50.9(h)(i)(7)(A)(v) – page 38 of 84 – unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time and not able to document the costs of owning, holding or improving the property. It is unfair to not allow for the appreciated value of the property. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago.

Section 50.9(h)(8)(B) on Page 42 of 84 requires installation of a sign on the property prior to the submission of an application, and requires the sign to state the date, time and location of the public hearing. This will not be known when the sign is installed. The QAP need to be revised to delete this provision or for meeting date to be posted after TDHCA posts the meeting dates.

Section 50.9(h)(9) (page 43 of 84) should require that if the development's proposed ownership includes participation by a governmental entity or an instrumentality or affiliate of a governmental entity as the Applicant, Development Owner, Developer, or source of commitment for development funding must provide evidence that they are legally authorized to operate in the area where the proposed project is located. If there is nonprofit participation, evidence should be provided that their bylaws or articles of incorporation show they are authorized to so participate. An example is a county housing authority applying in a municipality where it does not have a cooperation agreement or a local finance agency participating outside their area of jurisdiction based on state law.

Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

Section 50.9((i)(5)A(v), (page 52 of 84) limits credits for in-kind contributions for the period between the award or August 1, 2008 and the placed in service date. Does this mean that if an entity contributes the leasehold value of land it will be limited to less than full value (e.g., only to place in service date)? If so, this is a very unfair provision that needs to be deleted. A contribution of land on a lease value should be allowed full value for at least the initial compliance period.

Section 50.9(i)(6), support by State Senator or Representative (page 53 of 84), shows opposition letters are -14 points. The AP needs to show that if 2 opposition letters are received, the total deduction cannot exceed -14 points.

Section 50.9(i)(17), development in non-uran area (page 57 of 84). There is no justifiable basis for awarding 6 points simply because a development is in a locality with less than 100,000 in population. This provision should be deleted from the QAP or lowered to 3 points.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 1:00 PM
To: Audrey Martin
Subject: FW: 2008 QAP

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 3:39 PM
To: 'Robbye Meyer'
Cc: Brooke Boston
Subject: FW: 2008 QAP

New comments

-----Original Message-----
From: Mary Vela [mailto:mvela@alamoha.com]
Sent: Wednesday, October 10, 2007 3:15 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: FW: 2008 QAP

Attached are comments to TDHCA 2008 Qualified Allocation plan.

Alamo Housing Authority
Mary Vela

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to Qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Audrey Martin

From: Barry Kahn [bkahn@hettig-kahn.com]
Sent: Monday, August 06, 2007 9:46 AM
To: Audrey Martin
Cc: 'Robbye Meyer (E-mail)'; Brooke Boston; michael.gerber@tdhca.state.tx.us; 'Jim Brown'
Subject: Comments for new QAP

Sorry I couldn't make Thursday's roundtable. Here are some comments and thoughts for the new QAP.

1. 49.9(i)(27)(B). It is suggested that penalty points with regard to a foreclosure or removal of a GP/developer be limited to those occurring within 6 years of an allocation of credits for a development, not forever. With projects getting squeezed with no rent increases, and in fact rent decreases due to increasing utility allowances, and increasing operating expenses, good, qualified developers are now facing the additional risk of having a default with an older property. Changes in market or area conditions beyond a developer's control may also affect older properties. One takes these risks with newer properties for which one needs to have responsibility through the typical guarantee periods which typically end around 5 years from commencement of construction (two years to build and lease up and then a 3 year guaranty period). Even lenders and syndicators don't require guarantees after this period of time. Without change, the industry may lose many of the better and more experienced developers since they are penalized for up to five years thereafter. The proposed six year limitation is supported by major syndicators such as SunAmerica, Boston Capital and others. In instances where there has been a lack of good faith by a developer, most lenders and investors would more than likely not do further business with such an applicant, thus the department has a secondary safeguard for those situations.

2. There is a national movement towards single family ownership. Even though the 5 year new homeownership credit has been rejected due to cost by the Congress, one can still do a 15 homeownership program properly designed through a housing authority where the HA, subject to their ability to acquire title through their right of first refusal, can give the tenants an option. Federal tax law prohibits an owner from giving such an option but a well designed program with a HA as the general partner can achieve this. The requested change is that the single family per square foot construction allowance mirror the elderly allowance instead of the multifamily (non
senior) allowance.

3. The QAP was changed last year giving the department the right to withdraw credits for an allocated transaction up to issuance of 8609s due to noncompliance on another deal with the same developer. This change needs to be deleted in order protect the investor/lender community. If such a situation arose and the credits were withdrawn, the big losers would be the stakeholders who had the cash invested. If this happened, no lender or investor would then support a Texas deal.

4. A new green thought. I went to the Reznick roundtable on energy credits Wednesday afternoon. For using solar panels and other devices, one can recover approximately 30% through federal tax credits. The problem is how does the developer recover the other 70% of the extra costs. The suggestion would be that one include an estimate in their application and get additional credits up to approximately __ (say 60%) of the cost of the items, to be verified at cost cert, in addition to the credits allowed within the point limitations. And the per project cap on credits would be also adjusted. If enacted, there may be a limit on how much any project could get. It would be hard to do a per unit limit since the size of units vary as well as the number of units per building. Happy to discuss.

As always, the department's hard work is appreciated.

MUELLER

October 3rd, 2007

VIA FAX (512-475-3978) AND E-MAIL (2008rulecomments@tdhca.state.tx.us)
Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Comment on 2008 Qualified Allocation Plan

Dear Mr. Gerber:

The Robert Mueller Municipal Airport ("Mueller") is the 711-acre site of the old Austin airport that closed in 1999 when the Bergstrom International Airport opened. Austin stakeholders and public officials announced a plan for compact neighborhoods at Mueller, promoting a pedestrian-friendly, mixed-use and mixed-income community.

As the Master Developer of Mueller selected by the City of Austin (City), Catellus Development Group (Catellus) strongly supports affordable housing at Mueller. In fact, at least twenty-five (25%) percent of the homes will be sold/leased to families at affordable incomes. Consistent with the tax credit program, an affordable resident for the rental housing can earn no more than sixty percent (60%) or less of the median family income for Austin. Catellus is currently planning a senior rental affordable housing site to be built at Mueller and will identify an affordable housing site for families in the near future.

Mueller is already an award-winning community and will be the first of its kind in the heart of Austin utilizing compact, traditional neighborhood design elements. Mueller is near downtown Austin and only two miles from the Capitol and the University of Texas. When completed, the Mueller site will be an urban village that will be home to 10,000 residents, including approximately 1,200 affordable homes, and will also offer approximately 10,000 jobs.

The design concepts for Mueller include mixed-use, pedestrian orientation, mass transit focus, green building, mixed-income and architectural quality. These concepts provide a community ideally suited for sustained success for the affordable homes. The compact mixed-use neighborhood will allow residents to walk to work, parks and retail. The pedestrian and transit aspects reduce dependency on automobiles and the costs associated with them, including rising gas prices. All of the homes will be built to Austin Energy Green Building standards resulting in lower monthly energy bills. The mixed-income community will support residents from diverse backgrounds and create neighborhoods that generate a sense of pride and inclusion. Mueller's Design Guidelines encourage beautiful architecture in line with New Urbanism design standards.

These design concepts make Mueller an ideal community for long-term success of a 9% tax credit property.

We look forward to working with the Texas Department of Housing and Community Affairs to make our plans for the affordable housing at Mueller a reality. You can learn more about Mueller at www.MuellerAustin.com.

Unfortunately, Mueller does not appear to score well in the 2008 Qualified Allocation Plan (QAP) draft that is currently open to public comment. We encourage TDHCA to make the following revisions to the QAP to make Mueller's location and design concept a competitive application for 9% tax credits:

Definitions [50.3]

Please include the following definition:

"Adaptive Reuse – The transformation of an existing nonresidential development (e.g. school, warehouse, airport) into a residential development."

Cost of the Development by Square Foot [50.9(i)(8)]

The $85 per square foot of net rentable area should not apply to parking structures, including podium or underground parking garages. A surface parking space costs approximately $500 per parking space, but a structured parking garage costs $12,000 per space and an underground parking garage costs $20,000 per space. The $85-per-square-foot limit means that urban areas that require structured parking rather than surface parking to avoid sprawl and encourage dense pedestrian-friendly design will not be competitive in the 9% tax credit application process.

We suggest the following revision, "This calculation does not include indirect construction costs, or structured parking garages (including podium and underground designs) if the costs associated with the structured parking garage are not included in eligible basis."

Rehabilitation (which includes Reconstruction) or Adaptive Reuse [50.9(i)(11)]

We suggest the following clarification of this provision, "Rehabilitation (which includes Reconstruction) or Adaptive Reuse. Applications may qualify to receive 6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), or solely Reconstruction (excluding New Construction of non-residential buildings) or solely Adaptive Reuse qualify for points."

Development Includes the Use of Existing Housing as Part of a Community Revitalization Plan [50.9(i)(13)]

This point item is designed to encourage developers to rebuild areas that are part of an official Community Revitalization Plan. Adaptive Reuse can accomplish this goal as effectively as rebuilding existing housing and should also qualify for these points.

We suggest the following revision, "Development Includes the Use of Existing Housing or Adaptive Reuse as part of a Community Revitalization Plan. The Development is an Existing Residential Development or Adaptive Reuse and proposes Rehabilitation, Reconstruction, or Adaptive Reuse as part of a Community Revitalization Plan."

Economic Development Initiatives [50.9(i)(15)]

Texas law allows municipalities to designate zones that receive economic development incentives and benefits. These zones are known as tax increment reinvestment zones and should be included in the list of areas eligible for economic development points.

We suggest the following revision, "Economic Development Initiatives: A Development that is located in one of the following two areas may qualify to receive four points: (1) a Designated State or Federal Empowerment, Enterprise Zone, Designated Tax Increment Reinvestment Zone pursuant to Chapter 311 of the Texas Tax Code..."

Site Characteristics [50.9(i)(22)]

In the 2008 draft QAP, proposed new language this year includes deducting site characteristics points for, "Developments where the buildings are located within the accident zone or flight paths for commercial or military airports." Mueller is approximately 10 miles from Bergstrom International Airport, and the noise from any airplanes that may fly overhead is negligible. TDHCA should delete this language from the QAP because flight path maps are not available to the public. If a site is located in a flight path but far from an active airport, the site presents no risk of accident or excessive noise. TDHCA environmental study rules already require noise studies if a site is located near an airport, and a noise study is more appropriate than deducting points for sites located in flight paths that are distant from an airport.

If you have questions about our comments, please contact me at your earliest convenience. We look forward to working with TDHCA as a partner in the historic effort to make Mueller a model mixed-income, mixed-use community.

Sincerely,

Matt Whelan
Senior Vice President
Catellus Development Group

Audrey Martin

From: Marks, Scott [smarks@coatsrose.com]
Sent: Thursday, October 04, 2007 12:49 PM
To: 2008rulecomments@tdhca.state.tx.us; Audrey Martin; tom.gouris@tdhca.state.tx.us; Robbye Meyer; bboston@tdhca.state.tx.us
Subject: Mueller Airport & 2008 QAP

2008 QAP proposed revisions Fi...

Please find attached some comments on the draft 2008 QAP.

Scott Marks
COATS | ROSE
A Professional Corporation

1717 West 6th Street
Suite 370
Austin, TX 78703

(512) 469-7987 ext. 8444
(713) 890-3911 (fax)
smarks@coatsrose.com
www.coatsrose.com

Charter Contractors, Inc. dba Charter Builders
8455 Lyndon Lane, Ste 100 Austin, TX 78729
P: 512-249-6240 – F: 512-249-6660
cci@charterci.com-www.charterci.com

9

QAP

October 2, 2007

Robbye Meyer
Director of Multifamily Programs
Texas Department of Housing and Community Affairs
221 E. 11th St
Austin, TX 78701

RE: Increasing costs of Construction Materials

Ms. Meyer,

I am writing this letter of public input to raise the Departments awareness to the continuing cost increases in building materials in hopes of having the cost per square foot in the upcoming QAP modified to reflect these increases. Commodities worldwide have been escalating in price and the current cost per square foot in the QAP is becoming increasingly harder for builders to meet. Lumber, concrete, steel, copper, gasoline, and cement have all become significantly more expensive over the past 18 months and meeting the benchmarks set forth in the QAP has been challenging.

I would like to propose the following amendments to the QAP for the Department to consider for the 2008 Tax Credit Cycle which will benefit not only builders and developers, but enhance the overall quality and viability of each subsequent development.

Cost per square foot of Net Rentable Area:

Development Type	**2007**	**Proposed**
Elderly, Transitional, Single Room Occupancy	$85	$88
Above Located in a First Tier County	$87	$90
All Other Developments	$75	$78
Above Located in a First Tier County	$77	$80

I firmly believe that raising the allowable costs per square foot will benefit the Tax Credit Program and its participants while increasing its viability and competitiveness.

Thank you for your time and consideration in this matter.

R. J. Collins

President
Charter Builders

10 QAP

CSH
supportive housing it works.

October 1, 2007

Received
OCT - 3 2007

Robbye Meyer
Interim Director, Multifamily Housing
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Meyer:

On behalf of the Corporation for Supportive Housing I am writing to share our comments directly related to the draft 2008 QAP.

As coalitions across the state begin implementing their 10-year plan to end homelessness, it is clear that the success of that effort will rely on the support of the state's tax credit program. The Texas Department of Housing and Community Affairs (TDHCA) has expressed its interest in supporting the development of supportive housing in Texas and it is our hope that our comments will help encourage stronger applications that will lead to viable, sustainable supportive housing projects.

In review of the draft 2008 QAP, it is clear and understandable that preservation is a priority as evident by the creation of the "At Risk Set-Aside". The set-aside basically includes projects with long-term subsidies that are nearing term. With that in mind, we ask that you also consider including projects under the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program in the at risk set-aside. Sustaining projects that have utilized this funding is crucial to the fight of ending long-term homelessness. As one of the key funding programs authorized out of the McKinney Vento Homeless Assistance Act, this program has permanently housed countless numbers of homeless individuals and provided developers with the strongest operating subsidy available to underwrite projects and make them viable.

In addition, in urban areas of the state working to implement 10-year plans to end homelessness, the cap presently placed on credit allocation ($1.2 million) severely restricts the amount of subsidy projects can receive. Given limited capital funding sources on both the state and city level, this limits the expediency of bringing new permanent supportive housing projects online to serve the homeless. It also forces many project sponsors to utilize conventional financing, which is difficult when building projects that serve individuals at or below 30% of the area median income (AMI). We ask that

TDHCA consider allowing exceptions to this cap in cases where the proposed development is a permanent supportive housing project and supports a city's 10-year plan to end homelessness.

Finally, we applaud your effort to increase mixed income developments through increasing the amount of points from 18 to 22 if at least 40% of the units are set-aside for households are at or below 50% AMI and 5% of the units for households at below 30% AMI. However, we would like to advocate for a higher percentage of units that serve those hardest to serve at 30% AMI. Again, these efforts will support initiatives created as a result of 10-year plans to end homelessness and make the production goals achievable within a shorter period of time.

We appreciate TDHCA's commitment to supportive housing and thank you in advance for your consideration of these comments.

Sincerely,

Kelly W. Kent
Senior Program Manager

Audrey Martin

From: Robbye Meyer
Sent: Tuesday, October 09, 2007 1:11 PM
To: Audrey Martin
Subject: FW: public comments on QAP draft related to SRO development with tax credits

Thanks Erin.

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Erin Ferris [mailto:erin.ferris@tdhca.state.tx.us]
Sent: Tuesday, October 09, 2007 1:06 PM
To: 'Robbye Meyer'
Cc: Brooke Boston
Subject: FW: public comments on QAP draft related to SRO development with tax credits

Hi Robbye and Brooke,

Here are Tony Sisk's public comments on the draft QAP. Please let me know if you need any additional info for the formal submission - I think this is all that's necessary, but if I'm missing anything, just let me know.

Thank you,

Erin K. Ferris
Policy and Public Affairs Advisor
TX Dept of Housing & Community Affairs erin.ferris@tdhca.state.tx.us
(512) 463-7961

-----Original Message-----
From: Tony Sisk [mailto:tsisk@cri.bz]
Sent: Monday, October 08, 2007 5:26 PM
To: erin.ferris@tdhca.state.tx.us
Cc: mari.moen@csh.org
Subject: public comments on QAP draft related to SRO development with tax credits

Erin-

These are my comments related to the draft QAP, with issues affecting tax credit financing for SRO-Permanent Supportive Housing.

1-Allow tax credits to be used for specific targeted groups. Example-single mothers SRO in Austin. 2-Selection Criteria Section 11. SRO units are typically very small. In reconstruction/rehab it is usually required that spaces by retrofitted to have more units and to substantially rebuild spaces to create the "state of the art" units. Specifically, allow all SRO redevelopments to be classified as "rehab" for the 6 points if any existing residential or commercial property is involved. Clarify wording in Section 13 for the same issue. As long as rehab/reconstruction is involved in revitalization area, grant the 6 points for SRO projects. There needs to be maximum flexibility for SRO development 3-Selection Criteria for max cost per SF. Exempt SRO developments from the $85 SF. The rentable SF of small SRO units should not be subjected to the $85 SF maximum cost. Grant 10 points for all SRO deals to encourage new state of the art construction/rehab. 4-Underwriting. SRO deals need to be exempt from the 1.30 maximum DSC underwriting

standard, as well as the 65% of income test for expenses. In order for the 1.15 feasibility test to be met, an SRO must have low debt at inception, which would substantially exceed the 1.30 test.

These are my comments. I would appreciate your advocacy for the Supportive Housing developers in Texas.

Tony Sisk

J. Anthony Sisk
Director of Development
Churchill Residential, Inc.
5605 N. MacArthur Blvd. #580
Irving, TX 75038
(972) 550-7800 x 224
(972) 679-8395 cell
(972) 550-7900 Fax
tsisk@cri.bz
www.churchillresidential.com

Audrey Martin

From: Barry Palmer [BPalmer@coatsrose.com]
Sent: Monday, October 08, 2007 5:04 PM
To: michael.gerber@tdhca.state.tx.us
Cc: robbye.meyer@tdhca.state.tx.us; brooke.boston@tdhca.state.tx.us; audrey.martin@tdhca.state.tx.us
Subject: Adherence to Obligations Provision

Dear Mike:

As we discussed at the September Board Meeting, there is a problem that the developer community has identified with the Adherence to Obligations provision of the draft 2008 QAP. The difficulty is that the penalties, as currently drafted, are too severe and can be out of proportion to the importance of the infraction, especially with regard to amendments requested after the modification has already been implemented. In particular, we have found numerous cases where a responsible developer has inadvertently made changes to the development plans but only realizes at the cost certification inspection that the Department regards such changes as materially modifying the application.

We believe a system of escalating penalties is needed in order to provide the Board and the Executive Director with the flexibility needed to adequately handle inconsequential "after the fact" amendments without effectively banning the developer from the Housing Tax Credit Program for the next two years. To that purpose, we have drafted the enclosed proposed provision, which largely follows the format of the staff's proposed language, but includes the concept of increasingly severe penalties for subsequent infractions. The proposal also permits the substitution of amenities of equivalent value, when the Executive Director or the Board is inclined to accept the proposed substitution.

We anticipate that the use of the increasing severity of fines and other penalties will serve to teach the responsible developers quickly that permission for changes must be sought in advance, while still permitting the Department to impose a serious penalty when a developer repeatedly ignores the Department's policy to clear deviations from the Application in advance.

We would appreciate your consideration of the language proposed, which we have drafted after consultation with a number of the major Housing Tax Credit developers. If you have any questions concerning the enclosure, or if you would like more information on the purpose underlying the penalties we think should be imposed, please call me at 713-653-7395.

Very truly yours,

Barry J. Palmer

Barry Palmer

COATS | ROSE
A Professional Corporation

3 East Greenway Plaza

Suite 2000
Houston, TX 77046

713-653-7395
(713) 890-3944 (fax)
BPalmer@coatsrose.com
www.coatsrose.com

(c) **Adherence to Obligations.** (§2306.6720, General Appropriation Act, Article VII, Rider 8(a)) All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application, does not receive approval for an amendment to the Application by the Department subsequent to the Application but prior to implementation of such amendment, or does not provide the necessary evidence for any points received by the required deadline, then:

(1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities of sufficient value to compensate for any non-conforming components that represent a decrease to the development cost; and

(2) the Development Owner's Application shall lose the points in any instance where necessary evidence for the points was not received by the required deadline; and

(3) the Board will opt to do one of the following:

(a) for the first instance of violation within a five (5) year period, impose a fine in the amount of $25,000, payable to the Housing Trust Fund;

(b) for the second instance of violation within a five (5) year period, impose a fine in the amount of $50,000, payable to the Housing Trust Fund;

(c) for the first two instances of violations within a five (5) year period where a penalty is to be imposed because of failure to provide one or more amenities that were promised in the Application, the Board may choose to impose an alternate penalty by imposing a fine equal to the value of the amenity or amenities that were promised but not provided, to be offset by the value of any extra amenities that were not proposed in the Application but were provided in the completed development and are deemed acceptable to the Department's staff. For the purpose of this alternate penalty, valuations must be approved by the Department's staff; or

(d) for the third and subsequent instances of violations within a five (5) year period, either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable, or:

(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following the earlier of: (i) the date that the non-conforming aspect, or lack of financing, was identified by the Department and the Development Owner was advised by the Department of the need for an amendment; or (ii) the date the amendment is approved by the Board; and

(B) Prohibit eligibility to apply for tax credits for any Tax-Exempt Bond Developments that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for 12 months following the earlier of: (i) the date that the non-conforming aspect, or lack of financing, was identified by the Department and the Development Owner was advised by the Department of the need for an amendment; or (ii) the date the amendment is approved by the Board.

For amendments that do not require Board approval under §50.17(d) and are permitted to be approved administratively by the Executive Director, the Executive Director may impose a fine of $5,000, payable to the Housing Trust Fund, if the amendment has been implemented prior to the date of the Executive Director's notice approving the amendment.

COMMUNITY PARTNERSHIP FOR THE HOMELESS

QAP 8

October 3, 2007

Robbye Meyer
Director, Multifamily Housing Programs
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Ms. Meyer:

On behalf of Community Partnership for the Homeless I am writing to share our comments directly related to the draft 2008 QAP.

As city and counties across the state begin implementing their 10-year plan to end homelessness, it is clear that the success of that effort will rely on the support of the state's tax credit program. The Texas Department of Housing and Community Affairs (TDHCA) has expressed its interest in supporting the development of supportive housing in Texas and it is our hope that our comments will help encourage stronger applications that will lead to viable, sustainable supportive housing projects.

In review of the draft 2008 QAP, it is clear and understandable that preservation is a priority as evident by the creation of the "At Risk Set-Aside". The set-aside basically includes projects with long-term subsidies that are nearing term. With that in mind, we asked that you also consider projects under the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program. Sustaining projects that have utilized this funding is crucial to the fight of ending long-term homelessness. As one of the key funding programs authorized out of the McKinney Vento Homeless Assistance Act, this program has permanently housed countless numbers of homeless individuals and provided developers with the strongest operating subsidy available to underwrite projects and make them viable.

In addition, in urban areas of the state working to implement 10-year plans to end homelessness, the cap presently placed on credit allocation ($1.2 million) severely restricts the amount of subsidy projects can receive. Given limited capital funding sources on both the state and city level, this limits the expediency of bringing new permanent supportive housing projects online to serve the homeless. It also forces many project sponsors to utilize conventional financing, which is difficult when building projects that serve individuals at or below 30% of the area median income (AMI). We ask that TDHCA consider allowing exceptions to this cap in cases where the proposed development is a permanent supportive housing project and supports a city's 10-year plan to end homelessness.

Finally, we applaud your effort to increase mixed income developments through increasing the amount of points from 18 to 22 if at least 40% of the units are set-aside for households are at or below 50% AMI and 5% of the units for households at below 30% AMI. However, we would like to advocate for a higher percentage of units that serve those hardest to serve at 30% AMI. Again, these efforts will support initiatives created as a result of 10-year plans to end homelessness and make the production goals achievable within a shorter period of time.

P.O. Box 685065 • Austin, Texas 78768 • **TEL** 512.469.9130 • **FAX** 512.469.0724 • **WWW** austinhomeless.org

We appreciate TDHCA's commitment to supportive housing and thank you in advance for your consideration of these comments.

Please do not hesitate to contact me if you have any questions or need additional information.

Most Sincerely,

Frank Fernandez
Executive Director

Audrey Martin

From: Don Youngs [don@youngsco.com]
Sent: Tuesday, August 21, 2007 4:23 PM
To: Audrey Martin
Cc: Mike Sugrue
Subject: Input on Draft QAP Self-Scoring (16) Development Location, Item F

Item "F" under Development Location (page 57/84) states "The proposed Development will be located in an area with no other existing Qualified Elderly Developments supported by housing tax credits."

My concern is use of the word, "area," which is open to multiple interpretations, as opposed to more specific descriptive words like "City," "Census-Tract," "ZIP Code," etc.

Thank you,

Don Youngs

Don Youngs
817-503-8239 (voice)
817-605-8240(fax)
214.957.8239 (cell)
Don@YoungsCo.com

DOUBLEKAYE CORP.

Austin, Texas 78729-7610
7217 McNeil Drive
(512) 331-5172
Fax (512) 331-4774

October 12, 2007

TDHCA, 2008 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

Comments on 2008 QAP

TDHCA,
Included are papers on two different sections of the 2008 QAP that is open for public comment. In developing property with USDA and Tax Credits since 1989 I have seen the ebb and flow of different rules and how dramatically they affect development of these type properties.

The two issues addressed could one of those times when a seemingly benign limitation of access to credits by USDA properties could have dramatic and lasting consequences. Please carefully consider the comments and contact me if you have questions.

Sincerely,

Gary L. Kersch, President

DKK/LTRHEAD

With respect to the proposed QAP rule for Set-Asides in Section 50.7 (b)(2) on page 20 or 84; it is proposed that the rule be clarified.

The rule reads, in part: Developments financed through TRDO-USDA's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside. Any Rehabilitation or Reconstruction of an existing 515 development that retains the 515 loan and restrictions, regardless of the source or nature of additional financing, will be considered under the At-Risk and USDA set-aside.

It seems the rule can reasonably be interpreted that a development that has both TRDO-USDA 515 and 538 financing would be excluded OR included from the TRDO-USDA set aside based upon how you want to read the rule.

Based upon previous staff comments, there is the assumption that ANY development with 538 financing, in whole or part, is EXCLUDED from the TRDO-USDA set aside. And that this exclusion applies even if the development has existing and retained 515 financing; therefore it is proposed-

A minor change be made to the scoring under the Selection Criteria Section 50.9 (i)(5)(A) for local financing included in the development. The qualified eligible financing would be expanded to include combined 515 and 538 financing as an eligible alternative to local financing for existing properties that qualify for At-Risk Set Asides.

The affect would be that existing TRDO-USDA 515 rehabs that used 538 funds would receive additional points in the At-Risk set aside and be more likely to receive an award. Thus the priority for RD, Rural and At Risk would be better served.

Perspectives supporting this change:

- It seems agreed that intent of all parties was to not exclude 515 rehabs from using the 538 loan program AND the RD Set Aside. However the statute specifically has that unintended consequence.
- Since existing RD properties with rehab ultimately come from the At-Risk set aside it is not likely to result a in significant additional use of credits by RD Rehab projects. (Per Section 50.7 (b)(2) on page 20 or 84 , …..If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside;)
- No tax credits will be used up from the Rural set aside if these properties with combined financing are compelled to compete in the At-Risk set aside to receive the proposed extra scoring points.

- Overcoming of the unintended prohibition of using the 538 in the RD set aside will allow for the expansion of alternatives to fund these difficult re-developments.

- It is clear the future funding of substantial RD-Rehab work will be with the 538 funding source. To wait for statue correction will delay and ultimately prohibit the preservation of existing low income housing stock tied to USDA funding.

- The difficulty with 538 funded new constructions competing with RD rehabs that was experienced in the previous cycle is not repeated. In other words, the 538 funded new construction will not be competing with RD rehab projects in the RD or Rural set aside in practical terms since these rehabs will be funded from the RD set aside or the At-Risk set aside and the 538 new construction will be in the Rural set aside.

With respect to the proposed QAP rule for the definition of Rural Area in Section 50.3 (83)(C) & (D) and (84) on page 11 & 12 of 84; I would propose that the rule be clarified.

The rule reads, in part:

(C) In an Area that is eligible for ~~New Construction~~ funding by Texas Rural Development Office or the United States Department of Agriculture (~~TX~~TRDO-USDA~~-RHS~~), other than an area that is located in a municipality with a population of more than 50,000~~; or~~

~~(D)~~ On a specific Development Site eligible for Rehabilitation funding by TX~~-USDA-RHS as evidenced by an executed TX-USDA-RHS letter indicating TX-USDA-RHS has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406~~. (§2306.~~6702~~004)

(8~~1~~4) **Rural Development--**A Development or proposed Development that is located ~~with~~in a Rural Area, other than rural new construction Developments with more than 80 units. ~~A Rural~~

The affect of this rule is to eliminate from the definition of Rural Area, existing TRDO-USDA 515's that are eligible for rehab and TRDO-USDA funding in Municipalities of 50,000 or more.

A substantial percentage of the existing TRDO-USDA properties are within the subject 50,000 population definition. With the difficulties already existing with 538 funding and other exclusions that surface, it may put properties with these profiles outside the RD set aside.

Conceivably, these properties would not be competitive in another set aside and would put some existing TRDO-USDA 515's even more at risk.

Therefore it is proposed-
Section 50.3 (83)(D) be re-instated as before the change proposed.

This would put the existing TRDO-USDA properties back into the classification of a Rural Area and Rural Development as was previously defined.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:57 PM
To: Audrey Martin
Subject: FW: Comments on 2008 QAP

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 4:14 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: Comments on 2008 QAP

-----Original Message-----
From: Gary L. Kersch [mailto:garyk@doublekaye.com]
Sent: Wednesday, October 10, 2007 3:57 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: Comments on 2008 QAP

Attached are comments to be considered for the 2008 QAP.

I also am trying to fax them today.

Gary L. Kersch, President
Doublekaye Corp. <(())<
(512)331-5173x3

Apolonio (Nono) Flores
201 Cueva Lane, San Antonio, Texas 78232
Telephone 210-494-7944 Fax 210-494-0853
Email: nono62@swbell.net

COMMENTS ON 2008 DRAFT QAP

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

Section 50.3(55)(c) (page 7 of 84) needs to be revised to allow at least one unit with more than 2 bedrooms if occupied by the property manager or a maintenance employee.

Section 50.3(62) (page 8 of 84) needs to show that a neighborhood organization includes a Residents Council.

The definition of "Rehabilitation" in Section 50.3(80) (page 10 of 84) was broadened to include **reconstruction** of demolished units on the same site. The definition needs to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features such as environmental issues or location in a flood plain, conditions in the area surrounding the project adversely affect the health or safety of the residents or other factors make the site unsuitable for housing or the feasible operation of the project, or another location is in the best interest of the residents (e.g., closer to amenities or lower density by a larger site), or for other reasons acceptable to the Department. In addition, reconstruction of a larger number of units than previously existed should be allowed if the site's size allows for additional units and the additional units are restricted for occupancy by renters with incomes at or below 50% of median income.

Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area where the proposed project is located. A similar provision should be made for nonprofit participation regarding their bylaws and articles of incorporation not allowing such participation.

Section 50.6(d) Credit Amount (page 17 of 84), unfairly proposes to impose the $2 million limitation to a Housing Authority and nonprofit entities based on individual board members and executive directors participation in other applications. It is unfair to count the amount of a volunteer board member of a housing authority or a nonprofit entity who may also be a developer in their private business that is unrelated to the housing authority or nonprofit entity or vice verse. It is also unfair to count the amount of an application by an unrelated entity simply because an executive director may serve as a board member of the unrelated entity. This section needs to be revised so that an application(s) by unrelated entities or applicants do not count for the $2 million limitation. Similarly, the $2 million limitation should not apply a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Section 50.7(b)(3) (page 20 of 84) correctly deducts the 15% set aside for at-risks projects from the state ceiling prior to the application of the regional formula.

Section 50.9(c), Adherence to Obligations (page 25 of 84), should be revised as follows (*red Language denotes suggested changes):*

2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
(b) For the second violation, a fine of $50,000, payable to the Housing Trust Fund;
(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay

caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

50.9(h)(i)(7)(A)(v) – page 38 of 84 – unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time and not able to document the costs of owning, holding or improving the property. It is unfair to not allow for the appreciated value of the property. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago.

Section 50.9(h)(8)(B) on Page 42 of 84 requires installation of a sign on the property prior to the submission of an application, and requires the sign to state the date, time and location of the public hearing. This will not be known when the sign is installed. The QAP need to be revised to delete this provision or for meeting date to be posted after TDHCA posts the meeting dates.

Section 50.9(h)(9) (page 43 of 84) should require that if the development's proposed ownership includes participation by a governmental entity or an instrumentality or affiliate of a governmental entity as the Applicant, Development Owner, Developer, or source of commitment for development funding must provide evidence that they are legally authorized to operate in the area where the proposed project is located. If there is nonprofit participation, evidence should be provided that their bylaws or articles of incorporation show they are authorized to so participate. An example is a county housing authority applying in a municipality where it does not have a cooperation agreement or a local finance agency participating outside their area of jurisdiction based on state law.

Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

Section 50.9((i)(5)A(v), (page 52 of 84) limits credits for in-kind contributions for the period between the award or August 1, 2008 and the placed in service date. Does this mean that if an entity contributes the leasehold value of land it will be limited to less than full value (e.g., only to place in service date)? If so, this is a very unfair provision that needs to be deleted. A contribution of land on a lease value should be allowed full value for at least the initial compliance period.

Section 50.9(i)(6), support by State Senator or Representative (page 53 of 84), shows opposition letters are -14 points. The AP needs to show that if 2 opposition letters are received, the total deduction cannot exceed -14 points.

Section 50.9(i)(17), development in non-uran area (page 57 of 84). There is no justifiable basis for awarding 6 points simply because a development is in a locality with less than 100,000 in population. This provision should be deleted from the QAP or lowered to 3 points.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 1:02 PM
To: Audrey Martin
Subject: FW: 2008 Draft QAP Comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 1:58 PM
To: 'Robbye Meyer'
Cc: Brooke Boston
Subject: FW: 2008 Draft QAP Comments

New comment. This replaces yesterdays comments from Apolonio Flores

-----Original Message-----
From: Apolonio Flores [mailto:nono62@swbell.net]
Sent: Wednesday, October 10, 2007 1:30 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: RE: 2008 Draft QAP Comments

I submitted comments yesterday but have now added as shown on the attachment that you may use instead of yesyerday's email. The added comment was **Section 50.6(h), page 19 of 84),** Limitation on Developments Proposing to qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Apolonio (Nono) Flores
Flores Residential, LC
201 Cueva Lane
San Antonio, TX 78232
(210) 494-7944
(210) 494-0853 fax

From: Apolonio Flores [mailto:nono62@swbell.net]
Sent: Tuesday, October 09, 2007 8:42 PM
To: '2008rulecomments@tdhca.state.tx.us'
Subject: 2008 Draft QAP Comments

Attached are my comments to the draft 2008 QAP.

Apolonio (Nono) Flores

Flores Residential, LC
201 Cueva Lane
San Antonio, TX 78232
(210) 494-7944
(210) 494-0853 fax

FOUNDATION COMMUNITIES
creating housing where families succeed

3036 South First
Suite 200
Austin, TX 78704

tel: (512) 447-2026
fax: (512) 447-0288

www.foundcom.org

October 10, 2007

TDHCA, 2008 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941
FAX: **(512) 475-3978**
and E-MAIL: 2008rulecomments@tdhca.state.tx.us

I am writing to offer feedback on the draft 2008 QAP and the Underwriting guidelines. Thank you for this opportunity.

Foundation Communities has developed three supportive housing communities in Austin which serve formerly homeless adults. We could not have accomplished these developments without investment from TDHCA. Thank you.

We appreciate that the QAP and the underwriting guidelines recognize the unique characteristics of supportive housing, and have some flexibility to support this critical housing resource. Supportive housing such as SROs do not fit the same 'box' as conventional tax credit apartments.

We encourage TDHCA to continue to find ways to invest in supportive housing, especially now that HOME rental funds are not available within PJs.

We support efforts by TDHCA to use tax credits and other funds to develop quality housing for extremely low income households (below 30% mfi). The need for housing and services for families at this income level is acute in all parts of Texas. By contrast, the tax credit program has produced enough housing to meet the needs in many parts of Texas for families with incomes at 60% mfi.

We also support work by TDHCA to incorporate green building practices into all its funding decisions. The Enterprise Foundation just released a comparison guide of

creative methods being used by each state within their QAP to promote healthier, less energy intensive affordable housing.

We have two specific comments - the first is minor: the threshold criteria (page 35 in the draft) appear to require that SRO units have a ceiling fan. Although ceiling fans make lots of sense, especially in new construction, we could not consider them in our last three SRO renovation projects because of the high cost. The electrical requirements and challenge of orienting them with the fire sprinklers would have been tricky and expensive to resolve. We would ask for flexibility on ceiling fans, at least for renovation projects. The addition of ceiling fans is already an optional selection criteria item for the quality of the units.

Our second comment is major: Please place a cap on the total amount of credits per unit that will be allowed in the program. Many other states follow this practice. The cap can be very high – say $8000 credits/unit. In 2007 some projects received over $100,000 worth of credits for a single unit of housing, when so many other well qualified projects that cost much less were not funded. Perhaps the cap is set at one or two standard deviations from the average in 2007. This recommendation does not force project sponsors to lower their quality, it simply says that the very highest cost projects are just too expensive. If you adopt this simple reform, you could materially increase the amount of quality housing that is built. This reform does not force developers to compete with each other to lower their costs and risk lowering quality – it only cuts off projects which are extremely expensive.

Thank you for your consideration.

Sincerely,

Walter Moreau

Walter Moreau,
Executive Director

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 1:08 PM
To: Audrey Martin
Subject: FW: 2008 TDHCA Rule Comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 10:18 AM
To: 'Robbye Meyer'
Cc: Brooke Boston
Subject: FW: 2008 TDHCA Rule Comments

Fresh comments

-----Original Message-----
From: Jennifer Daughtrey [mailto:Jennifer.Daughtrey@Foundcom.org]
Sent: Wednesday, October 10, 2007 9:49 AM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 TDHCA Rule Comments

Please find attached our 2008 TDHCA Rule Comments.....

Thanks!

Jennifer Daughtrey

Jennifer Daughtrey
Development Project Manager
Foundation Communities
3036 S. 1st Street, Suite 200
Austin, TX 78704
Phone: (512) 447-2026 x.25
Fax: (512) 447-0288
www.foundcom.org
"creating housing where families succeed"

With respect to the proposed QAP rule for the definition of Rural Area in Section 50.3 (83)(C) & (D) and (84) on page 11 & 12 of 84; I would propose that the rule be clarified.

The rule reads, in part:

(C) In an Area that is eligible for ~~New Construction~~ funding by Texas Rural Development Office or the United States Department of Agriculture (~~TX~~TRDO-USDA~~-RHS~~), other than an area that is located in a municipality with a population of more than 50,000~~; or~~

~~(D)~~ On a specific Development Site eligible for Rehabilitation funding by TX~~-USDA-RHS as evidenced by an executed TX-USDA-RHS letter indicating TX-USDA-RHS has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406~~. (§2306.~~6702~~004)

(8~~1~~4) **Rural Development--**A Development or proposed Development that is located ~~with~~in a Rural Area, other than rural new construction Developments with more than 80 units. ~~A Rural~~

The affect of this rule is to eliminate from the definition of Rural Area, existing TRDO-USDA 515's that are eligible for rehab and TRDO-USDA funding in Municipalities of 50,000 or more.

A substantial percentage of the existing TRDO-USDA properties are within the subject 50,000 population definition. With the difficulties already existing with 538 funding and other exclusions that surface, it may put properties with these profiles outside the RD set aside.

Conceivably, these properties would not be competitive in another set aside and would put some existing TRDO-USDA 515's even more at risk.

Therefore it is proposed-
Section 50.3 (83)(D) be re-instated as before the change proposed.

This would put the existing TRDO-USDA properties back into the classification of a Rural Area and Rural Development as was previously defined.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:53 PM
To: Audrey Martin
Subject: FW: 2008 QAP Comment on Rural

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 5:35 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: 2008 QAP Comment on Rural

-----Original Message-----
From: Ginger McGuire [mailto:gmcguire@lancasterpollard.com]
Sent: Wednesday, October 10, 2007 5:01 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 QAP Comment on Rural

TDHCA,

I have attached a proposed rule comment to the 2008 QAP regarding local participation. I endorse this addition and respectfully request that the 515/538 loan combination for rehab be permitted to count as local contribution for the At-Risk and the Rural category.

If you have any questions, please do not hesitate to contact me at 512 703-4600.

Sincerely,

Ginger McGuire

Greater Greenspoint District

October 9, 2007

RECEIVED
OCT 09 2007
DEPUTY ED.

Mr. Michael Gerber
Executive Director
Texas Department of Houston and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: Public Comments on TDHCA Rules & Policy Statements

Dear Mr. Gerber:

This letter is to officially document our suggested changes to TDHCA's 2008 rules & policy statements, addressing our specific concerns regarding the Housing Tax Credit and Multifamily Bond Programs' notification practices, appropriate market studies and an increased focus on rehabilitation projects. The Greenspoint District is a political subdivision of the state of Texas with responsibility for promoting economic development and quality of life in Greenspoint, an activity center in north Houston.

As we discussed in a September 6, 2007, meeting, our requested changes to the 2008 rules and policies are as follows:

- Include **notification to all Special Districts** in which the applicant's site is located.
- The REA regulations, as proposed, do not require a **market area sufficiently large enough** to determine the realistic market of an area. Inclusion of "adjacent census tract" data would create a more accurate picture of the market.
- Existing Market Study language should be made clearer so it is **understood that ALL multi-family dwelling units shall be included in a study,** not just TDHCA/tax credit/bond properties.
- **More aggressive incentives** should be considered for a development applying **for "refurbishment" funds** (as opposed to new-build funds) to encourage revitalization within the areas most-eligible for TDHCA developments.
- All of the **changes made to the rules and policies should be consistent** throughout the Qualified Application Plan, the Quantifiable Community Participation guidelines, and all other appropriate guidelines and regulations for TDHCA's programs.

Attached is the original set of recommendations submitted as wording for HB 1167 in past legislative sessions. It is provides more detail, but all its points have been previously submitted and discussed with your department. We chose to summarize the points above.

16945 Northchase Drive, Suite 1900, Houston, Texas 77060 • (281) 874-2131 • FAX (281) 874-2151

Thank you for your consideration of these issues. As always, we are your partners in accomplishing the best for those needing housing and for the Greenspoint area.

Very truly yours,

James Curry
Chairman, Board of Directors
Greenspoint District

Jack Drake
President
Greenspoint District

Attachment: 1

cc: *Representative Kevin Bailey, Chairman, Urban Affairs Committee*
Jeff Smith, Executive Director, Houston Housing Finance Corp.

HB 1167 – Suggested language changes

Notification Process:

- **The "Elected Officials" section (Sec. 2306.6718) should be changed to read "Public Officials."** Additional language should be added within the body of that section, as follows: "(2) the chief executive of the political subdivision containing the development described in the application, **including School Districts, College Districts, Business Improvements Districts, Municipal Management Districts, Tax Increment Reinvestment Zones, and all other political subdivisions and special districts.**"

Scoring Process

- "Special districts" are included in the definition of "Local Government" (Sec. 2306.004) and are exempted from counting towards official scoring in the development's application process. **Continuing the term "special districts" throughout the bill** would increase awareness and participation by these entities whom carry that information out to their constituents—the surrounding community.

Market Study Requirements:

- **Language must be added to include information on MARKET-RATE dwellings located within the defined market study area.** Market-rate information **will "include data from recognized sources regarding the number of existing rental units, their most current rental rates and the percentage of vacant 'market-rate' units."** (Currently, the law only requires studies to include the number of low-income qualifying developments, which is not an adequate reflection of the area as a whole.)

- Clearer guidelines need to be made as to what needs to be included in the Market Study and how that area is defined. **Market Studies should be based on the census tract the proposed development resides in *as well as* data from all adjacent census tracts.** Current TDHCA-approved methodology for determining market areas leads to gerrymandered market study areas, (i.e. one side of a street will be included, but the opposite side of the street with 3 apartment complexes is excluded…)

- "Priority for certain communities" (Sec. 2306.127) is granted to urban enterprise communities, urban enhanced enterprise communities, and economically distressed areas or colonias. **Language should be added to exclude those areas, as defined above, which have accommodated a certain number of TDHCA developments within the past 5 years.**

Other:

- **Greater emphasis should be placed on awarding funds to a development who is applying for "refurbishment" dollars** (as opposed to new-build dollars) from

TDHCA *to encourage revitalization within the areas most-eligible to TDHCA developments.*

- **Greater importance should be given to** "*placement of qualifying low-income persons into already existing low-income developments*" (Sec. 2306.171.) Additional language should be added to that, as follows: *"placement of ... low-income developments* **as well as market-rate properties where rental rates are comparable to those of existing low-income developments."** Adding this language would to ensure that units built in a certain area do not become "surplus" units when others are not yet filled to capacity.

H.A.V.E ASSOCIATION
AN ASSOCIATION OF RIO GRANDE VALLEY HOUSING AUTHORITY
Ms. Daisy Flores, President
P.O. Box 5806, Brownsville, TX 78520

COMMENTS ON 2008 DRAFT QAP

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

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Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area where the proposed project is located. A similar provision should be made for nonprofit participation regarding their bylaws and articles of incorporation not allowing such participation.

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The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

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2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
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(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay

caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

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Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

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Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:58 PM
To: Audrey Martin
Subject: FW: 2008 QAP

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 4:08 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: 2008 QAP

-----Original Message-----
From: Apolonio Flores [mailto:nono62@swbell.net]
Sent: Wednesday, October 10, 2007 3:54 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 QAP

Attached are comments to the draft 2008 QAP by the H.A.V.E. Association, an association of Housing Authorities in the Rio Grande Valley.

Housing Authority of the City of Kingsville

BROWN VILLA PROJECT - TX114-1
CONNELL VILLA PROJECT - TX114-3
MAPLE CIRCLE PROJECT - TX114-2 & 4
CASA RICARDO PROJECT - TX114-5
HORIZON VILLAGE – TX114-010
SECTION 8 HOUSING CHOICE VOUCHER

CENTRAL OFFICE
P.O. BOX 847
1000 WEST CORRAL
KINGSVILLE, TEXAS 78363
PHONE- (361) 592-6783
FAX: 361-595-1997

COMMENTS ON 2008 DRAFT QAP

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Thank you for your consideration.

Cory Hinojosa
Executive Director
Kingsville Housing Authority

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:56 PM
To: Audrey Martin
Subject: FW: Comments for 2008 Qualified Allocation Plan

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 4:18 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: Comments for 2008 Qualified Allocation Plan

-----Original Message-----
From: Cory Hinojosa [mailto:chinojosa@khatx.com]
Sent: Wednesday, October 10, 2007 3:59 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: Comments for 2008 Qualified Allocation Plan

Please find attached the comments for the 2008 Qualified Allocation Plan.

Thank you.

Cory Hinojosa
Executive Director
Kingsville Housing Authority

The Housing Authority of the
City of Pharr
104 W. Polk Ave.
Pharr, Texas 78577
(956) 787-1822 or 787-9501
Fax (956) 783-0955

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2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
(b) For the second violation, a fine of $50,000, payable to the Housing Trust Fund;
(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment;

and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

50.9(h)(i)(7)(A)(v) – page 38 of 84 – unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time and not able to document the costs of owning, holding or improving the property. It is unfair to not allow for the appreciated value of the property. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago.

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Section 50.9(h)(9) (page 43 of 84) should require that if the development's proposed ownership includes participation by a governmental entity or an instrumentality or affiliate of a governmental entity as the Applicant, Development Owner, Developer, or source of commitment for development funding must provide evidence that they are legally authorized to operate in the area where the proposed project is located. If there is nonprofit participation, evidence should be provided that their bylaws or articles of incorporation show they are authorized to so participate. An example is a county housing authority applying in a municipality where it does not have a cooperation agreement or a local finance agency participating outside their area of jurisdiction based on state law.

Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

Section 50.9((i)(5)A(v), (page 52 of 84) limits credits for in-kind contributions for the period between the award or August 1, 2008 and the placed in service date. Does this mean that if an entity contributes the leasehold value of land it will be limited to less than full value (e.g., only to place in service date)? If so, this is a very unfair provision that needs to be deleted. A contribution of land on a lease value should be allowed full value for at least the initial compliance period.

Section 50.9(i)(6), support by State Senator or Representative (page 53 of 84), shows opposition letters are -14 points. The AP needs to show that if 2 opposition letters are received, the total deduction cannot exceed -14 points.

Section 50.9(i)(17), development in non-uran area (page 57 of 84). There is no justifiable basis for awarding 6 points simply because a development is in a locality with less than 100,000 in population. This provision should be deleted from the QAP or lowered to 3 points.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 1:01 PM
To: Audrey Martin
Subject: FW: 2008 QAP Comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 2:24 PM
To: 'Robbye Meyer'
Cc: Brooke Boston
Subject: FW: 2008 QAP Comments

-----Original Message-----
From: Janie Martinez [mailto:janie@pharrha.com]
Sent: Wednesday, October 10, 2007 2:04 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 QAP Comments

Comments from the Pharr Housing Authority.

Richard Herrington, Jr.
Executive Director
Housing Authority of the City of Texarkana, TX
1611 N. Robison Road
Texarkana, Texas 75501
903 – 838 – 8548

COMMENTS ON 2008 DRAFT QAP

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

Section 50.3(55)(c) (page 7 of 84) needs to be revised to allow at least one unit with more than 2 bedrooms if occupied by the property manager or a maintenance employee.

Section 50.3(62) (page 8 of 84) needs to show that a neighborhood organization includes a Residents Council.

The definition of "Rehabilitation" in Section 50.3(80) (page 10 of 84) was broadened to include **reconstruction** of demolished units on the same site. The definition needs to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features such as environmental issues or location in a flood plain, conditions in the area surrounding the project adversely affect the health or safety of the residents or other factors make the site unsuitable for housing or the feasible operation of the project, or another location is in the best interest of the residents (e.g., closer to amenities or lower density by a larger site), or for other reasons acceptable to the Department. In addition, reconstruction of a larger number of units than previously

existed should be allowed if the site's size allows for additional units and the additional units are restricted for occupancy by renters with incomes at or below 50% of median income.

Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area where the proposed project is located. A similar provision should be made for nonprofit participation regarding their bylaws and articles of incorporation not allowing such participation.

Section 50.6(d) Credit Amount (page 17 of 84), unfairly proposes to impose the $2 million limitation to a Housing Authority and nonprofit entities based on individual board members and executive directors participation in other applications. It is unfair to count the amount of a volunteer board member of a housing authority or a nonprofit entity who may also be a developer in their private business that is unrelated to the housing authority or nonprofit entity or vice verse. It is also unfair to count the amount of an application by an unrelated entity simply because an executive director may serve as a board member of the unrelated entity. This section needs to be revised so that an application(s) by unrelated entities or applicants do not count for the $2 million limitation. Similarly, the $2 million limitation should not apply a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to Qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction." It is suggested that the Board of or staff have discretion to release or remove this requirement in the presence of a HOPE VI or if there is a request from the local jurisdiction or city if it relates to a housing authority and the deconcentration of public housing.

Section 50.7(b)(3) (page 20 of 84) correctly deducts the 15% set aside for at-risks projects from the state ceiling prior to the application of the regional formula.

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Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:55 PM
To: Audrey Martin
Subject: FW: 2008 QAP Comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 4:21 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: 2008 QAP Comments

-----Original Message-----
From: Richard Herrington [mailto:rherrington@texarkanaha.org]
Sent: Wednesday, October 10, 2007 4:14 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 QAP Comments

To Whom It May Concern

Attached are comments for the 2008 QAP. If you have any questions please do not hesitate to contact me.

Richard Herrington, Jr.
Executive Director
HATT
903 - 838 - 8548, ext 102

Jane E. Polk Sinski
406 Meadowview
Kerrville, Texas 78028
830-257-5084
jesinski@ktc.com

August 5, 2007

Michael Gerber
The Texas Department of Housing & Community Affairs (TDHCA)
P.O. BOX 13941
Austin, TX 78711-3941
(512) 475-3800

Dear Mr. Gerber:

Last year I wrote to the TDHCA members about some proposed apartments in Kerrville, Texas. I see in my local newspaper that the Tax Credits have been awarded totaling $712,276 for the 76 apartments called Paseo de Paz located across the street from the Kerr County Jail. I realize that Kerrville needs affordable apartments and I think that it is wonderful that tax credits are available to provide these kind of housing units.

I am concerned about the location of these apartments. They will be in the eastern part of Kerrville on Clearwater Paseo Drive (please see attached plat map). The plan calls for 76 units. 16 units will have one bedroom, 36 will have two bedrooms, and 24 will have three bedrooms. This means that a minimum of 150 to 160 persons will be living in these apartments. The apartments will be located directly across from the Kerr County Justice Center (the Sheriff's offices and the jail). Has anyone from your agency gone to this site to see where the apartments will be located? I was looking at the "2006 Housing Tax Credit Program Qualified Allocation Plan and Rules" on your website and I notice that safe housing and the safety of the residents are both mentioned. I am concerned for the safety of these residents that will be in such proximity to the jail. Two inmates escaped a few years ago and also inmates who are released and have no one to pick them up, simply walk out the door of the jail. Also, emergency vehicles travel to the jail on a weekly basis, both for drills and valid emergencies, and this fast traffic would endanger children and others playing and walking in front of the apartments. I am also concerned about noise and bright lights across the street from these apartments. The electric company headquarters and a lumber yard are across the street diagonally and they have bright lights and noise from machines and loud speakers. Another concern that I have is that the nearest elementary school, Kerrville ISD Tom Daniels school, is already at capacity, and any young children who live in these apartments will have to be bussed across town.

This field floods – the recent rains have left water still sitting in the field and the ditches were overflowing. I see that the plan includes a new drainage ditch, which is badly needed. A

great amount of water after a rainstorm flows down from the development of Mesa Park and the hill next to the baseball field at Olympic Park.

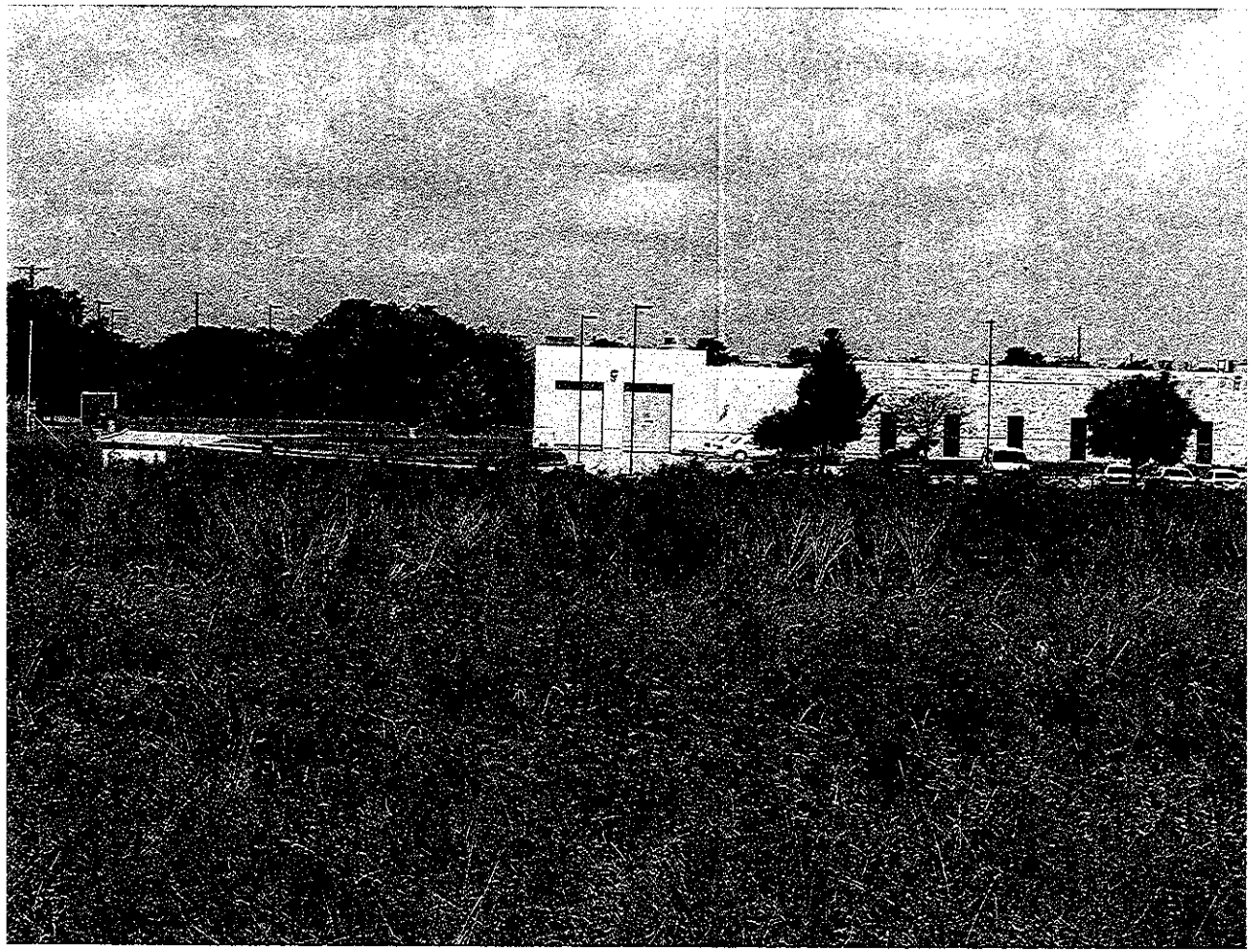
I am wondering if there are also some rules about what can be built near a jail. I found that the Texas Administrative Code, Chapter 37 Public Safety and Corrections, Part 9 Texas Commission on Jail Standards, Chapter 260, Subchapter B says (about a jail site): "The site shall be of sufficient size to provide for the immediate facility and a reasonable projected expansion. A buffer zone around the facility shall be provided." This same code, Chapter 261, Subchapter C Existing Minimum Security Design, Construction and Furnishing Requirements, Rule 261.308 Inmate Movement Into and Out of Facility says: "Construction should provide for movement of an inmate or detainee into and out of the facility without exposing the individual to contact with the public." The jail detainees in Kerr County will be directly across from the proposed apartments.

I really appreciate that you are listening to my concerns. I know that affordable housing is badly needed in Kerrville. I am just wondering if the location across from the jail would be the best choice.

Last year no one replied to any of my letters – not even a "thank you for your input". This year, I would appreciate some kind of reply, so that I know that someone read my letter.

Thank you,

Jane E. Polk Sinski
Kerrville, Texas



Kerr County Jail July 2007
This Field is where Paseo De Paz
Apartments will be located

MF
Compliance
Legal
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2007 STATE OF TEXAS PUBLIC HEARING ON AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT - COMMENTS

Houston-Hearing
Wednesday, September 26th, 6:00 pm Houston City Hall Annex
900 Bagby Street, Public Level Chamber Houston, TX 77002

My name is Kathi Zollinger and I sit on the Harris County MUD 71 Board of Directors and the Bridgewater Community Association in Katy, TX. MUD 71 is comprised of approx 2900 homes and still growing and Bridgewater Community Association is approx 2000 homes and will be built out at 2140 homes.

My comments primarily are addressing the areas of:

- Compliance Monitoring, Accessibility Requirements, and Administrative Penalties Rules
- Housing Tax Credit (HTC) Qualified Allocation Plan and Rules (QAP)

I appreciate your taking the time to come to Houston to hear public comments on these programs this evening. I was heavily involved in the Elrod Place (07019) project in Katy this year.

At the July 30th Board meeting on July 30th a number of HOA members (taxpayers) in our Community including myself commuted to and attended your Board meeting along with Representative Callegari, Peter McElwain from KISD and an attorney that our Community approved to work on this project to dispute the Market Survey done on Elrod Place. The community backed renting a small bus for the purpose of traveling to Austin and these Homeowners took time off work (at great expense to them) to go testify in front of the TDHCA Board.

Since Elrod Place as it turned out was not recommended by staff to the Board for Allocation, following testimony by Rep Callegari, Peter McElwain, and the Association's attorney, the Chair stated that due to the hour and that since there were so many projects that were recommended for allocation that if those wishing to still speak on this project still wished to DO so...we would have to wait until the end. We waited until the end but we were never re-asked if we wanted to speak.

TDHCA spokespeople stated publicly later that we CHOSE not to speak which we inaccurate and really upset those homeowners and myself who has spent MANY hundreds of hours dedicated to working on this for so many months and those homeowners

KATHI ZOLLINGER PO BOX 6830 KATY TX 77491 (281) 647-6166

who had taken time off work at expense to them to travel to Austin and were not allowed to do what they came to do and on top of it read publicly that they chose NOT to.

One of the primary focuses in the process was there many things concealed from the community. As an HOA Board member and MUD Board member in the adjacent community to the proposed project, both boards gave many opportunities to this developer to meet with the community and I will say he DID do that. However, he was NOT candid and honest in his dealings with them or us as Boards and frankly with you all. There were things all through the application that I found that were not true He was not honest and he concealed key elements that we found out later which were not honest or concealed.

There should be strong sanctions against these developers for doing this. I was truly shocked when some of these things were brought to the attention of this board and they were essentially thrown out as not important. It's somewhat amusing to me that even the potential MUD that they were going to be ANNEXED into finally agreed that he was wrong in these areas, had used papers that he should not have been using but TDHCA wasn't interested. How can you use documents saying you're already in the MUD you're trying to annex into when you're not been officially annexed yet? Further, you're using those documents to go out and get loans and grants and he used those multiple times throughout your application.

Perhaps if the application process was streamlined and the application wasn't over 400 pages that these things wouldn't be getting passed. More things would be getting caught. I know I sit on two boards and I don't even know what the heck to do with all the paper. It's nuts. I can't imagine with all that paper. I think sometimes the developers bank on that. They expect every document to not get read. I know he didn't expect ME to read every piece of paper.

In addition, our community showed up at a community meeting in a number 700 strong showing opposition to the Elrod Project. The Hearing came in this very place but because of the location and most people in our community are working people, only a fraction of that number could attend. I understand that in the past there have been hearings under different programs on Clay Road and Highway 6. This is much closer to our Community and gives the community a much better opportunity to be part of the process. This is imperative that this change and be consistent throughout

the programs that effect these folks. It's so wonder they are so angry when they learn of them and fell they have no voice.

One of the main things I came here today to say is this: As much as you all may think that I was one of the NIMBY folks. I am not. After I left the hearing in July, I came home and started thinking and making calls and I now have some ideas.

There are some fine people that are willing to give time in a very positive way to try to find positive answers to this end. I have spent many hours already speaking to Rep Callegari, Peter McElwain from KISD, Lance Lacour from Katy Economic Development Council and others. Mr. Lacour and I spoke of starting a task force of sorts to figure out how to resolve the problem that was mentioned to Mr. McElwain at the Board Meeting on July 30th. I have also spoken to Mr. McElwain about this in the past few days. He would like to figure out how to deal with the loss of tax revenue for KISD. How can the state give some offset to the school district and the MUD's with these programs so that there aren't these large battles every time?

I have an idea percolating that I have mentioned to all of these people. Most have embraced the idea in concept. The project that gave me the idea 'concept' is called 'the Sonoma' in the Rice Village. It's a multi-use complex with stores on the ground floor area with a courtyard area and living area above. If you recall some of my main arguments were that there was no public transportation out here (so yes that was a real argument on my part). This project would not have been good on Elrod Road but WOULD work on say somewhere like the Grand Parkway or Katy Freeway or some other main thoroughfare.

On the ground floor you would have a CVS or Walgreens so that the folks upstairs need only take an elevator or the stairs to go get RX's or a quart of milk and that takes away the transportation issue at least it is LESS of an issue. The van will be freed up for 'real' needs. Dr's appts and such.

In addition, there could be a KinderCare or day care so that a single parent could run down on their way to work and drop off the child or children and it's VERY close to home.

There could be a cleaners so that those errands are somewhere they do not have to drive to. Parents could spend MORE time with their children because they can walk to them with their children instead of hauling them around in their cars, which isn't necessarily special time.

KATHI ZOLLINGER PO BOX 6830 KATY TX 77491 (281) 647-6166

There could be an ice cream store and a courtyard area with fountains so that people could meet, network and those that are in the 'same boat as others with similar issues' could perhaps share help with one another. This sort of setup would foster this more than any other sort of set up.

They could also solicit a B Dalton or other Bookstore as one of the commercial entities and have reading days for the children. Sometimes they put Starbucks in the Bookstores although that's a little high end and might not fit with this idea but some sort of coffee place for people to visit.

The bottom line is this for it to work. The commercial will make up to the MUD and School District hopefully for what they lose in the housing tax credit/or in the housing, if that makes sense. In order for this to work and I'm not a tax person...the legislature will have to do some new laws to entice the businesses to buy into this for 5-10 years...whatever...a tax break of some sort...(not school or MUD)...some sort of help...so that they'll WANT to do this.

I have spoken to a few developers who think it's a great ideas. I realize these multi-use developments aren't big here...yet...but they are elsewhere. I have spoken to Rep Callegari and he thinks the idea has some merit to discuss.

Bottom line, you said bring ideas...here's one.

Last thing, for now is this. After dealing with the adjacent MUD I don't know HOW...yet and I don't think YOU have any IMPACT but IF you do, I'll ask for your help. Developer MUDS are able to pick their MUD Directors. Just really any old people, friends. Whomever. From what I can see, they pretty much just rubber stamp what they wealthy landowner asks them to do. This is wrong on SO many levels.

If you have ANY way to affect this, please do.

If there is a five member board, allow the 'wealthy' landowner to choose two of his friends and the other three need to be chosen from the adjoining community, no further than one and a half miles from the area he will build. This will assure that what is going on stays on the up and up. Ideally.

I realize there would need to be strict legislation to go along with this, as those folks would not be allowed to be on a board in their own MUD for a certain period of time

following their service on that MUD. The executive session material would be crucial to be private so sanctions would have to be serious for breaching confidentiality.

I have spoken to a number of people and everyone, everyone I have spoken to feel this is a seriously good idea especially after this last fiasco. I SIT on a MUD board and feel this is a good idea.

In closing, I'm not one to complain about things without trying to come up with solutions. I had written to you all in the past and asked to come to speak to you and not one of you responded. I was saddened by that. If someone from my community asks to come and speak or calls, I speak to them. If I don't, I'm not representing the people I promised to represent. I should pack up my backpack or briefcase, whatever the day is, and pack it in. I sit in front of board meetings where people literally come and yell at us, and often I ask, "Do you have any solutions"? And they often tell me, "No, that's what they pay YOU to do." My response to them is, "No, I don't get paid to do this...I am YOU...a homeowner...silly enough to volunteer many, many hours because I care about what happens in my community...so you don't PAY me"...

Now, "Do you have any solutions to that problem"? They don't know what to say...

Then I say..."Now, let's get to work...and try and find one."

So, that's what I'm here to do..."Let's find a solution...to the problems that besiege this program." I'm willing to roll my sleeves up.

Cc: Rep. Bill Callegari
Cc: Lance Lacour
CC: Peter Mcelwain

KATHI ZOLLINGER PO BOX 6830 KATY TX 77491 (281) 647-6166

October 3, 2007

KatyArea
Economic Development Council®
Teaming with Talent. Energizing the World.

Mr. Michael Gerber
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711-3941

Dear Mr. Gerber:

I have been in contact with Peter McElwain, Representative Bill Callegari and members of your staff, concerning TDHCA programs in the Katy Independent School District. We appreciate the opportunity to provide some comment related to TDHCA programs.

Referencing Mr. Alton Frailey's letter to you on October 1, 2007, let me say that I believe our organization supports the School Districts position concerning the Tax Credit Program, loss of tax revenue, allowance for point assignment, process amendments and compensation to school districts.

Our organization is assembling a task force of our Board members, other organizations and citizens from within the Katy area to review these programs and affordable housing in general. The purpose of this is to develop a position statement or position paper concerning this matter. The process will take several months and we will gladly share this information with your agency as soon as it is available.

Thank you for your attention.

Sincerely,

Lance LaCour
President / CEO

Cc: The Honorable Bill Callegari
The Honorable Glenn Hegar
Ms. Brenda Hull, TDHCA
Mr. Alton Frailey, KISD
Mr. John Bailey, KISD
Mr. Peter McElwain, KISD

6301 S. Stadium Ln.
Suite 111
Katy, Texas 77494
281.396.2200
fx: 281.396.2210

P.O. Box 970
Katy, Texas 77492
800.382.2204
info@katyedc.org
www.katyedc.org

KATY

Katy Independent School District

Alton L. Frailey
SUPERINTENDENT

Received
OCT - 3 2007

October 1, 2007

Mr. Michael Gerber
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Comments Regarding TDHCA Housing Tax Credit Program

Dear Mr. Gerber:

We are in receipt of your notice requesting public comment related to TDHCA programs. Thank you for the opportunity to reiterate our concerns regarding the Housing Tax Credit Program as it relates to the impact on Katy Independent School District.

We are requesting that the process associated with the Housing Tax Credit Program be modified to allow for compensation to school districts. The program currently provides incentives to developers to construct subsidized rental housing developments but does not compensate school districts such as Katy Independent School District for the cost to accommodate and to educate the additional number of students which, according to our demographers, are within these types of developments. Katy ISD is one of the fastest growing school districts in the state and in this regard surplus accommodation space is not readily available.

The Chief Tax Appraiser also confirms that the valuation for tax purposes related to the Tax Credit housing developments is far less than the valuation of a comparable standard market development. In this regard, the school district loses much needed tax revenue over what would be generated from a standard market development.

The program also needs to allow point assignment for all input received thereby allowing all community stakeholders to have the opportunity to provide input which counts in the final determination of project selection.

Fax Transmission

To:	(512)4753978
Fax Number:	(512)4753978
From:	Carol Pless
Date:	Wednesday, October 03, 2007
Subject:	Fax from Autostore
Message:	

Address: **Education Support Complex**
6301 South Stadium Lane
Katy, Texas 77494
Phone: (281) 396-6000
Main Fax: (281) 644-1800
Website: http://www.katyisd.org/

KATY
Katy Independent School District

Fax Transmission

Received
OCT 3 2007

To: Michael Gerber

From: Carol Pless

Fax Number: 5124753978

From Email: carolpless@KATYISD.ORG

From Fax #: 2816441812

# of Pages: 3 **Date:** 10/3/2007

Subject: TDHCA Housing Tax Credit Program

Message: Original document to follow as registered mail.

Facilities and Planning Department
6301 South Stadium Lane, Suite 1780
Katy, Texas 77494
Phone: (281) 396-2307
Main Fax: (281) 644-1812
Website: http://www.katyisd.org/

LA JOYA HOUSING AUTHORITY
J.J. Garza, Executive Director

COMMENTS ON 2008 DRAFT QAP

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

Section 50.3(55)(c) (page 7 of 84) needs to be revised to allow at least one unit with more than 2 bedrooms if occupied by the property manager or a maintenance employee.

Section 50.3(62) (page 8 of 84) needs to show that a neighborhood organization includes a Residents Council.

The definition of "Rehabilitation" in Section 50.3(80) (page 10 of 84) was broadened to include **reconstruction** of demolished units on the same site. The definition needs to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features such as environmental issues or location in a flood plain, conditions in the area surrounding the project adversely affect the health or safety of the residents or other factors make the site unsuitable for housing or the feasible operation of the project, or another location is in the best interest of the residents (e.g., closer to amenities or lower density by a larger site), or for other reasons acceptable to the Department. In addition, reconstruction of a larger number of units than previously existed should be allowed if the site's size allows for additional units and the additional units are restricted for occupancy by renters with incomes at or below 50% of median income.

Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area

where the proposed project is located. A similar provision should be made for nonprofit participation regarding their bylaws and articles of incorporation not allowing such participation.

Section 50.6(d) Credit Amount (page 17 of 84), unfairly proposes to impose the $2 million limitation to a Housing Authority and nonprofit entities based on individual board members and executive directors participation in other applications. It is unfair to count the amount of a volunteer board member of a housing authority or a nonprofit entity who may also be a developer in their private business that is unrelated to the housing authority or nonprofit entity or vice verse. It is also unfair to count the amount of an application by an unrelated entity simply because an executive director may serve as a board member of the unrelated entity. This section needs to be revised so that an application(s) by unrelated entities or applicants do not count for the $2 million limitation. Similarly, the $2 million limitation should not apply a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to Qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Section 50.7(b)(3) (page 20 of 84) correctly deducts the 15% set aside for at-risks projects from the state ceiling prior to the application of the regional formula.

Section 50.9(c), Adherence to Obligations (page 25 of 84), should be revised as follows (r*ed Language denotes suggested changes):*

2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
(b) For the second violation, a fine of $50,000, payable to the Housing Trust Fund;
(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph,~~

~~the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

50.9(h)(i)(7)(A)(v) – page 38 of 84 – unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time and not able to document the costs of owning, holding or improving the property. It is unfair to not allow for the appreciated value of the property. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago.

Section 50.9(h)(8)(B) on Page 42 of 84 requires installation of a sign on the property prior to the submission of an application, and requires the sign to state the date, time and location of the public hearing. This will not be known when the sign is installed. The QAP need to be revised to delete this provision or for meeting date to be posted after TDHCA posts the meeting dates.

Section 50.9(h)(9) (page 43 of 84) should require that if the development's proposed ownership includes participation by a governmental entity or an instrumentality or affiliate of a governmental entity as the Applicant, Development Owner, Developer, or source of commitment for development funding must provide evidence that they are legally authorized to operate in the area where the proposed project is located. If there is nonprofit participation, evidence should be provided that their bylaws or articles of incorporation show they are authorized to so participate. An example is a county housing authority applying in a municipality where it does not have a cooperation agreement or a local finance agency participating outside their area of jurisdiction based on state law.

Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

Section 50.9((i)(5)A(v), (page 52 of 84) limits credits for in-kind contributions for the period between the award or August 1, 2008 and the placed in service date. Does this mean that if an entity contributes the leasehold value of land it will be limited to less than full value (e.g., only to place in service date)? If so, this is a very unfair provision that needs to be deleted. A contribution of land on a lease value should be allowed full value for at least the initial compliance period.

Section 50.9(i)(6), support by State Senator or Representative (page 53 of 84), shows opposition letters are -14 points. The AP needs to show that if 2 opposition letters are received, the total deduction cannot exceed -14 points.

Section 50.9(i)(17), development in non-uran area (page 57 of 84). There is no justifiable basis for awarding 6 points simply because a development is in a locality with less than 100,000 in population. This provision should be deleted from the QAP or lowered to 3 points.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:59 PM
To: Audrey Martin
Subject: FW: 2008 QAP

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 4:02 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: 2008 QAP

-----Original Message-----
From: Apolonio Flores [mailto:nono62@swbell.net]
Sent: Wednesday, October 10, 2007 3:46 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: FW: 2008 QAP

Attached are comments from the La Joya Housing Authority to TDHCA's 2008 Qualified Allocation plan.

email to 2008rulecomments@tdhca.state.tx.us

LOCKE LORD BISSELL & LIDDELL LLP

100 Congress Avenue
Suite 300
Austin, Texas 78701-4042
Phone: (512) 305-4700
Fax: (512) 305-4800
http://www.lockelord.com

WRITER DIRECT
Cynthia L. Bast
Phone: (512) 305-4707
Fax: (512) 391-4707
Email: cbast@lockelord.com

MEMORANDUM

TO: Michael Gerber
Texas Department of Housing and Community Affairs

FROM: Cynthia L. Bast

DATE: October 10, 2007

RE: Public Comment – Draft Qualified Allocation Plan

Thank you for the opportunity to provide public comment on the draft 2008 Qualified Plan (the "**QAP**"). I have attached a handwritten mark-up, with certain comments. In addition, please consider the following:

1. **Section 50.3(37).** I believe there are certain federal and state statutes or rules under which disaster areas can be declared. Reference to that law would add clarity to this definition.

2. **Section 50.3(70)(A).** Note that, by law, no limited partner may control a partnership.

3. **Section 50.5(b)(3).** Why do the applicable parties in this subsection differ from the applicable parties in Section 50.5(b)(2)?

> (b)(2) refers to "the Applicant, Development Owner, Developer or Guarantor" and anyone who controls those parties.
>
> (b)(3) refers to "the Applicant, Development Owner, Developer or <u>any</u> Guarantor, <u>or any Affiliate of such entity [that] has been a principal of any entity.</u>"

Given the nature of these two grounds for disqualification, consistency between the references to applicable parties would be appropriate.

4. **Section 50.5(b)(4).** The reference to payment of all penalties within 30 days of the date billed may be problematic, given the differing timeframes for penalty payment under new 10 TAC § 60, Subchapter C.

5. **Section 50.6(d)**. Given that the QAP is annual and the CPI adjustment is annual, you may not need to indicate that CPI adjustments will be made in future years. Just state the amount of the credit limitation for the given year of the QAP, after application of any required CPI adjustment. Alternatively, if you maintain the CPI language, I recommend you indicate the first year in which the adjuster will apply.

6. **Section 50.6(c).** The limitation of Rural Developments to 80 Units when they are financed with Tax-Exempt Bonds is contrary to the intent to allow multiple site projects in rural areas. You have received commentary on this from a variety of sources, including Representative Menendez, and I support the position that Rural Developments financed with Tax-Exempt Bonds should not be limited in size, other than pursuant to market conditions.

7. **Section 50.6(c)(4).** I recommend this section be rewritten as follows to provide clarity:

> (4) For those Developments that propose an additional phase for an existing tax credit Development or that are otherwise adjacent to an existing tax credit Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size set forth in this subsection (e), unless:
>
> (A) the first phase of the Development has been completed and has attained Sustaining Occupancy (as defined in § 1.31 of this title) for at least six months; or
>
> (B) a resolution from the governing body of the city or county in which the proposed Development is located, dated on or before the date the Application is submitted, is submitted with the Application; such resolution should state that there is a need for additional Units and that such governing body has reviewed a market study, the conclusion of which supports the need for additional Units; or
>
> (C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the number of Units in the proposed Development may not exceed the number of Units being replaced, unless a market study supports the need for additional Units.

8. **Section 50.3(33)(B)**. Our clients question whether parking waivers on seniors projects qualify as Development Funding. They understand that these waivers are generally granted automatically and have nothing to do with the affordability of the property.

9. **Section 50.5(8)(A)**. Should properties that consist of 4-bedroom single family homes be excluded from this provision? They are a different product type not competing with the 1, 2, and 3- bedroom apartments, and serving a different need, with the goal of promoting eventual homeownership for larger families.

10. **Section 50.9(b)**. The language in subsections (1) and (2) should be identical, except for the distinction between Board and staff.

11. **Section 50.9(b)(3)**. Applicants regularly send emails to TDHCA staff outside of normal business hours, and TDHCA staff regularly send emails to Applicants outside of normal business hours. This circumstance does not seem to be contemplated under the new language. (Note that the prior language, which was deleted, did contemplate this occurrence.)

12. **Section 50.9(c)**. I recommend this section be rewritten as follows:

(c) **Adherence to Obligations.** (§2306.6720, General Appropriation Act, Article VII, Rider 8(a)) All representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be enforceable even if not reflected in the LURA. All such representations, undertakings and commitments are enforceable by the Department and the tenants of the Development, including enforcement. Enforcement mechanisms may include the assessment of certain penalties, as described below, the assessment of other administrative penalties, as described in the Department's Rules, or rescission of the Commitment Notice, Determination Notice, or Carryover Allocation by the Department.

If a Development Owner becomes aware of any change in the representations, undertakings, or commitments in its Application, it will process an amendment in accordance with Section 50.17 hereof. If such amendment is submitted and approved before the Development is placed in service, no penalties will be assessed hereunder. If such amendment is submitted after the Development is placed in service or if such amendment involves a failure to meet the Threshold Criteria or a reduction of points under the Selection Criteria that is not remedied by a substitution of similar items for points, then:

(1) the Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities of sufficient value to compensate for any non-conforming components that represent a decrease to the Total Housing Development Cost; and

(2) for the first two instances of violation within a five (5) year period, the Board, in its discretion, may opt to do one of the following:

(a) for the first instance of violation within a five (5) year period, impose a fine up to $_____; and

(b) for the second instance of violation within a five (5) year period, impose a fine up to $_____; or

(c) for the first two instances of violations within a five (5) year period where a penalty is to be imposed because of failure to provide one or more amenities that were promised in the Application, the Board may choose to impose an alternate penalty by imposing a fine equal to the value of the amenity or amenities that were promised but not provided, to be offset by the value of any extra amenities that were not proposed in the Application but were provided in the completed Development and are deemed acceptable to the Department's staff. For the purpose of this alternate penalty, valuations must be approved by the Department's staff; or

(3) for the third and subsequent instances of violations within a five (5) year period, the Board, in its discretion, may either terminate the Application and/or rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable, or:

(a) reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following the date the Development Owner's amendment is submitted to the Department; and

(b) prohibit eligibility to apply for tax credits for any Tax-Exempt Bond Developments that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for 12 months following the date the Development Owner's amendment is submitted to the Department.

In applying any penalty hereunder, the Board shall weight the severity of the violation in determining the penalty to be applied.

13. **Section 50.9(e)(3)**. With regard to compliance review, it appears that 9% tax credit applications must be in compliance with all of Chapter 60, while bond applications must be in compliance with only Chapter 60, Subchapter A. This leaves open the question of whether non-compliance under new Subchapter C impacts a bond deal. See also Section 50.9(f)(6), which requires compliance with all of Chapter 60 for Rural Rescue applications.

14. **Section 50.9(h)(4)(A)(ii)**. This paragraph distinguishes between family developments and Qualified Elderly Developments. What about Intergenerational Housing?

What if an amenity serves the family portion of the Intergenerational Housing but not the elderly portion?

15. **Section 50.9(h)(4)(A)(ii)(XXVI)**. Our clients have requested clarification as to the Green Building items. What constitutes construction waste management? If the city provides a recycling service at no cost to the owner, does that qualify? What would "other Department approved items" be?

16. **Section 50.9(h)(4)(A)(ii)(XXVII)**. We have clients who question the appropriateness of a hot tub as an amenity, particularly in light of the previously stated preference for energy efficiency.

17. **Section 50.9(h)(4)(G)**. Assume an Application includes all single family units. Some of them are two stories with three bedrooms and some of them are one story with three bedrooms. Does that mean that 20% of <u>all</u> the three bedroom units must be accessible, or must 20% of the two story three bedroom units be accessible and 20% of the one story three bedroom units be accessible?

18. **Section 50.9(h)(4)(L)**. This is an incomplete phrase. Do you intend for the Applicant to provide a certification of intent to operate in accordance the rental assistance provisions?

19. **Section 50.9(h)(5)(A)**. What does "conversion of existing buildings not configured in the Unit pattern proposed in the Application" mean? You have done a good job of using the terms New Construction, Rehabilitation, Reconstruction, and New Construction involving non-residential buildings (as adaptive reuse) consistently throughout the first part of the QAP. It would be beneficial to use those terms consistently here.

20. **Section 50.9(i)(2)**. We believe Applicants should be allowed to ask the Neighborhood Organization to include the Development Site. The purpose of quantifiable community participation is to give the neighborhood a voice in the development and operation of an affordable housing property. If the Neighborhood Organization can better exercise that voice by including the Development Site within its boundaries, then that is exactly what should be encouraged. If the residents of the proposed development can better participate in the neighborhood by being included in the Neighborhood Organization, then that is exactly what should be encouraged. The whole point is to get the neighborhoods and the owners working together and communicating; if that relationship can be facilitated by including the Development Site in the Neighborhood Organization's boundaries, then it should be done.

21. **Section 50.9(i)(5)(A)(iv)**. Requiring the Development Funding from the Local Political Subdivision to have a term of at least 5 years is problematic. Recently, the San Antonio HUD office has instructed participating jurisdictions to limit HOME loans made in connection with tax credit projects to a term of 1 year. Thus, any Applicant trying to use HOME funds from a local participating jurisdiction could be prevented from gaining these points because of HUD requirements.

22. **Section 50.9(i)(5)(A)(iv)**. The requirement that the interest rate be AFR "at the time of application" is problematic. When federal funds, like HOME funds, are being lent to a tax credit partnership, the interest rate must be AFR on the date of funding. (If there are multiple draws on the loan, multiple AFRs may even need to be used.) Otherwise, the loan might have to be removed from eligible basis. In my experience, several syndicators have found this requirement troublesome because it is not consistent with Section 42 requirements for federal funds.

23. **Section 50.9(i)(11)**. This section is confusing. Given the subheading, it appears you are trying to give points for adaptive reuse. However, in the body of the text, it excludes "New Construction of non-residential buildings," which is defined as "adaptive reuse" elsewhere in the QAP. So by excluding "New Construction of non-residential buildings," I believe you are excluding adaptive reuse from the points rather than including adaptive reuse for the points.

24. **Section 50.9(i)(15)**. This new section seems to be lacking requirements for proving up the funding, similar to those you have for Development Funding from a Local Political Subdivision. For instance, in subsection (2), it refers to grants but does not indicate they have to be available to the Development or anything about the amount that must be available. It seems you would need more here, both to substantiate the points and for purposes of underwriting.

25. **Sections 50.9(i)(16) and (19)**. Can an Applicant with an elderly Development receive 4 points under 50.9(i)(16)(F) and 6 points under 50.9(i)(19)? These two sections seem to contemplate the same concept, at least with regard to elderly Developments.

26. **Section 50.9(i)(22)(B)(vii)**. We understand the concerns that were presented with regard to flight paths in the 2007 Application Round. However, the proposed language lacks specificity and requires revision. No doubt many multifamily properties are within a "flight path". Use of FAA standards or some equivalent is needed. Perhaps the limitation should be that no Development should be placed in the part of the flight path that is closest to the airport, such as within one mile, for flight paths that extend across urban areas. Notwithstanding, if there is existing residential development near the Development Site in the flight path, then the Development should be permitted.

27. **Section 50.9(i)(25)(B)**. Our clients have concerns about requiring a HUB to participate in the Development throughout the compliance period. What if the HUB wants to sell its general partner interest for a profit in year 10? Shouldn't it be allowed to do so, just as any non-HUB could do? The market for general partner interests during the compliance period is growing. But if you require the HUB to stay in the deal or to sell to another HUB, you restrict the value of the general partner interest by limiting the pool of potential purchasers. If part of the goal is for the HUB to gain both experience and economic strength, then requiring HUB participation for the entire compliance period could limit a HUB's potential.

28. **Section 50.9(i)(29)(B)**. I recommend this section be rewritten a follows:

(B) Penalties will be imposed on an Application if an Applicant, Developer, or a Principal of an Applicant or Developer: (i) has served as the general partner or managing member of a limited partnership or limited liability company owning a property funded with tax credits and (ii) has been removed from such position as general partner or managing member by a lender or equity provider at any time within the five year period prior to the date the Application is submitted and such removal occurred less than six years after the tax credits were originally awarded to such property and such removal was based upon failure of the removed party to perform its obligations. The Applicant and Developer will be required to submit an affidavit indicating either that neither they, nor their Principals, have been subject to removal as described herein, or, alternatively, disclosing any instances of removal as described herein. If the Applicant or Developer or any of their Principals are in court proceedings with regard to a removal at the time of Application, such proceedings must be disclosed in the affidavit, and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal. If the Department later learns that a removal was not properly disclosed, then the Application will be terminated and any tax credit allocation made will be rescinded.

29. **Section 50.17(d)**. It is imperative that this section be revised as necessary to accommodate any changes to Section 50.9(c) (adherence to obligations) and any changes to the recently proposed amendment policy.

30. **Section 50.20(l)**. In prior years, TDHCA staff told project owners to hold on to amendment requests and submit them all at once for processing. This procedure was a recognition that multiple things can occur during construction that alter a proposed development. Now that amendments are required to be processed in advance, the fees associated with amendments can be burdensome. We have worked with clients that have been subject to multiple amendment fees before the completion of construction. We ask that you think about this ramification and propose relief, such as the following: (a) amendments that require Board approval are subject to a higher fee and amendments that can be done administratively through staff are subject to a lower fee; or (b) amendments that are requested in advance are subject to a lower fee and amendments that are not requested in advance are subject to a higher fee; or (c) the first amendment request is subject to a higher fee and subsequent amendment requests for the same Development are subject to a lower fee.

Thank you for your time in reviewing these comments. If you have any questions about my comments, please feel free to contact me.

Bast Comments
10/4/07

Multifamily Finance Production Division

DRAFT ~~2007~~2008 Housing Tax Credit Program

Qualified Allocation Plan and Rules

§~~49~~50.1.Purpose and Authority; Program Statement; Allocation Goals.

(a) Purpose and Authority. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, (the "Code") as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§~~49~~50.1 - ~~49~~50.23 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, affordable residential rental units by enabling the Rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of accessible affordable housing developments in rural and urban communities. (§2306.6701)

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. The processes and criteria utilized to realize this goal are described in §50.7, §~~49~~50.8 and §~~49~~50.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))

§~~49~~50.2.Coordination with Rural Agencies.

To ensure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to provide for sharing of information, efficient procedures, and fulfillment of Development ~~compliance~~ requirements in rural areas, the Department will ~~enter into a Memorandum of Understanding (MOU) or other agreement with the TX-USDA-RHS to~~ coordinate on existing, Rehabilitation, and New Construction housing Developments financed by ~~TX-USDA-RHS~~TRDO-USDA; and will ~~jointly~~ administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). Through participation in hearings and meetings, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. (§2306.6723)

§~~49~~50.3.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Administrative Deficiencies**--The absence of information or inconsistent information ~~a document from~~in the Application as is required under §§4950.5, 4950.6, 4950.8~~(d)~~ and 4950.9~~(g) - (j)~~ of this title, unless determined by the Department as unable to be corrected.

(2) **Affiliate**--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest unless the entity is an experienced developer as described in ~~§49.9(i)(21)(B)~~50.9(h)(9)(D) of this title.

(3) **Agreement and Election Statement**--A document in which the Development Owner elects, irrevocably, to fix the Applicable Percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(4) **Applicable Fraction**--The fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(5) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) 40 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

(ii) 15 basis points over the current applicable percentage for 30 ~~percent~~% present value credits, 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**--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(7) **Application**--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(8) **Application Acceptance Period**--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December 3, 2007 through February 29, 2008, as more fully described in §~~49.9(a)~~50.8 ~~and~~through §~~49.21~~50.12 of this title. For Tax-Exempt Bond Developments this period is the date the Volumes 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier~~, and for Rural Rescue Applications this is that period of time stated in the Rural Rescue Policy~~.

(9) **Application Round**--The period beginning on the date the Department begins accepting Applications for the State Housing Credit Ceiling and continuing until all available Housing Tax Credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, but not extending past the last day of the calendar year. (§2306.6702)

(10) **Application Submission Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for Housing Tax Credits.

(11) **Area--**

(A) The geographic area contained within the boundaries of:

(i) An incorporated place or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.

(B) For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Area characteristics of the incorporated place or CDP whose boundary is nearest to the Development site.

(12) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42.

(13) **At-Risk Development**--a Development that: (§2306.6702)

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

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);

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

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

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

(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) Sections 514, 515, and 516, Housing Act of 1949 (§42U.S.C. §§1484, 1485, and 1486); or

(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42), and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site.

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

(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 completed and, if applicable, documentation from the original application regarding the right of first refusal.

(14) **Bedroom**--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; 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.

(15) **Board**--The governing Board of the Department. (§2306.004)

(16) **Carryover Allocation**--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and Treasury Regulations, §1.42-6.

(17) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §4950.14(a) of this title.

(18) **Carryover Allocation Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(19) **Code**--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.

(20) **Colonia**--means Aa geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, and that consists of 11 or more dwellings that at located in close proximity to each other in an area that may be described as a community or neighborhood, and that (2306.581):

are ?

(A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Water Code; or

(B) Has the physical and economic characteristics of a colonia, as determined by the Texas Water Development BoardDepartment.

(21) **Commitment Notice**--A notice issued by the Department to a Development Owner pursuant to §4950.13 of this title and also referred to as the "commitment."

(22) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local governing body by ordinance or resolution, that targets specific geographic areas for revitalization and development of residential developments.

(23) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.

(24) **Compliance Period**--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(25) **Control**--(including the terms "Controlling," "Controlled by", and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing General Partner of a limited liability company.

member ✓

(26) **Cost Certification Procedures Manual**--The manual produced, and amended from time to time, by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Housing Tax Credit Program.

(27) **Credit Period**--With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(28) **Department**--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (§2306.004)

(29) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the affordability period. (§42(m)(1)(D))

(30) **Developer**--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §4950.9(d)(6)(B) of this title) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

Should this be the Compliance Period or extended use period?

(31) **Development**--A proposed qualified and/or approved low-income housing project, as defined by the Code, §42(g), for New Construction, Reconstruction, or Rehabilitation, that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) Located on a single site or contiguous site; or

(B) Located on scattered sites and contain only rent-restricted units. (§2306.6702)

(32) **Development Consultant**--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(33) Development Funding--Means (2306.004):

(A) a loan or grant; or

(B) an in-kind contribution, including a donation of real property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable Development.

(3~~3~~4) **Development 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. (§2306.6702)

(3~~4~~5) **Development Site**--The area, or if scattered site areas, for which the Development is proposed to be located and is to be under control pursuant to §~~49~~50.9(h)(7)(A) of this title.

(3~~5~~6) **Development Team**--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(37) Disaster Area--aAn area that has experienced a disaster and has been declared as a federal or state disaster, or has been identified by the Governor as requiring disaster assistance.

(3~~6~~8) **Economically Distressed Area**--Consistent with §17.921 of Texas Water Code, an Area in which:

(A) Water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules;

(B) Financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) An established residential subdivision was located on June 1, 1989, as determined by the Texas Water Development Board.

(3~~7~~9) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42(d).

(3~~8~~40) **Executive Award and Review Advisory Committee ("The Committee")**--A Departmental committee that will develop funding priorities and make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. (§2306.1112)

(3~~9~~41) **Existing Residential Development**--Any Development Site which contains 4 or more existing residential Units at the time the Volume I is submitted to the Department.

(4~~0~~2) **Extended Housing Commitment**--An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(4~~1~~3) **General Contractor**--One who contracts for the New 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. This party may also be referred to as the "contractor."

(4~~2~~4) **General Partner**--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development

(=) = upper case (/) = lower case

Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(435) **Governmental Entity**--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(446) **Governmental Instrumentality**--A legal entity such as a housing authority of a city or county, a housing finance corporation, or a municipal utility, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

(47) Grant--Means financial assistance that is awarded in the form of money to a housing sponsor or Development for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan. (2306.004)

(458) **Guarantor**--Means any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(469) **Historically Underutilized Businesses (HUB)**--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(4750) **Housing Credit Agency**--A Governmental Entity charged with the responsibility of allocating Housing Tax Credits pursuant to the Code, §42. For the purposes of this title, the Department is the sole "Housing Credit Agency" of the State of Texas.

(4851) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this title.

(4952) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, that amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which it allocates to the Development.

(503) **Housing Tax Credit ("tax credits")**--A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. (§2306.6702)

(514) **HUD**--The United States Department of Housing and Urban Development, or its successor.

(525) **Ineligible Building Types**--Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

(A) 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 (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living.

(B) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments with any Units having more than two bedrooms.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments proposing more than 70 percent two-bedroom units.

(EF) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(FG) Any Development located in an Urban/~~Exurban~~ Area involving any New Construction (excluding New Construction of non-residential buildings) of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings.

For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted by the age requirements of a Qualified Elderly Development. An Application may reflect a total of Units for a given bedroom size greater than the percentages stated below to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

(ii) More than 55% of the total Units are two bedroom Units; or

(iii) More than 40% of the total Units are three bedroom Units; or

(iv) More than 5% of the total Units in the Development with four or more bedrooms.

(~~G~~H) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.

(I) Any Development that contains residential units either designated for a single occupational group, or through a preference for a single occupational group, violates the general public use requirement. of Code Section —

(5~~3~~6) **Intergenerational Housing**--Housing that includes specific units that are restricted to the age requirements of a Qualified Elderly Development and specific units that are not age restricted in the same Development that:

(A) Have separate and specific buildings exclusively for the age restricted units,

(B) Have separate and specific leasing offices and leasing personnel exclusively for the age restricted units,

(C) Have separate and specific entrances, and other appropriate security measures for the age restricted units,

(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group,

(E) Share the same Development site,

(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) Meet the requirements of the federal Fair Housing Act.

(5~~4~~7) **IRS**--The Internal Revenue Service, or its successor.

(5~~5~~8) **Land Use Restriction Agreement (LURA)**--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (§2306.6702)

(5~~6~~9) **Local Political Subdivision**--A county or municipality (city) in Texas. For purposes of §~~49~~50.9(i)(5) of this title, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

(5~~7~~60) **Material Noncompliance**--As defined in §Chapter 60, Subchapter A of this title.

(5~~8~~61) **Minority Owned Business**--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(62) **Neighborhood Organization**—means an organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association.

(5~~9~~63) **New Construction**—means Aany construction ~~to~~ a Development or a portion of the a Development that does not meet the definition of Rehabilitation ~~or~~ (which includes Reconstruction).

(6~~0~~4) **ORCA**--Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code. ~~(§2306.6702)~~

(6~~1~~5) **Person**--Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization 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.

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(6~~2~~6) **Persons with Disabilities**--A person who:

(A) Has a physical, mental or emotional impairment that:

(i) Is expected to be of a long, continued and indefinite duration,

(ii) Substantially impedes his or her ability to live independently, and

(iii) Is of such a nature that the disability could be improved by more suitable housing conditions,

(B) Has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (§42U.S.C. §15002), or

(C) Has a disability, as defined in 24 CFR §5.403.

(6~~3~~7) **Persons with Special Needs**--Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(6~~4~~8) **Pre-Application**--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in this title. (§2306.6704)

(6~~5~~9) **Pre-Application Acceptance Period**--That period of time during which Competitive Housing Tax Credit Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(~~66~~70) **Principal**--the term Principal is defined as 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 ten percent or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(~~67~~71) **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.

(~~68~~72) **Qualified Allocation Plan (QAP)**--

(A) As defined in the Code, §42(m)(1)(B): Any plan which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions; which also gives preference in allocating housing credit dollar amounts among selected projects to projects serving the lowest-income tenants, projects obligated to serve qualified tenants for the longest periods, and projects which are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan; and which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of the Code, §42 and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(B) As defined in §2306.6702, Texas Government Code: A plan adopted by the board that provides the threshold, scoring, and underwriting criteria based on housing priorities of the Department that are appropriate to local conditions; provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the qualified allocation plan and this subchapter; and consistent with §2306.6710(e), gives preference in housing tax credit allocations to Developments that, as compared to the other Developments:

(i) When practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest-income tenants per housing tax credit; and

(ii) Produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low-income housing tax credit program.

(~~69~~73) **Qualified Basis**--With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(~~70~~74) **Qualified Census Tract**--Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(~~71~~75) **Qualified Elderly Development**--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See §42U.S.C. §3607(b)).

(~~72~~76) **Qualified Market Analyst**--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(~~73~~77) **Qualified Nonprofit Organization**--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the ~~TX-USDA-RHS~~TRDO-USDA Allocation. (§2306.6729)

(~~74~~78) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (§2306.6729)

~~(75) **Reconstruction**--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing adaptive re-use or proposing to increase the total number of Units in the Existing Residential Development are not considered Reconstruction.~~

(~~76~~79) **Reference Manual**--That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program.

(~~77~~80) **Rehabilitation**~~--~~means ~~T~~the improvement or modification of an Existing Residential Development ~~through~~ an alterations~~,~~ incidental additions or enhancements. The term includes the demolition of an Existing Residential Development and the Reconstruction of ~~any development units~~, but does not include the improvement or modification of an Existing Residential Development for the purposes of an adaptive reuse ~~of the Development~~. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Reconstruction, for these purposes, includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing adaptive reuse or proposing to increase the total number of Units in the Existing Residential Development are not considered Reconstruction. ~~Rehabilitation may include demolition within the existing walls of a structure to increase or decrease the number of Units or Bedrooms, but does not include demolition or adaptive reuse~~.

(~~78~~81) **Related Party**--As defined, (§2306.6702)

(A) The following individuals or entities:

(i) The brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573, Texas Government Code;

(ii) A person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(iii) Two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(I) The total combined voting power of all classes of stock of each of the corporations that can vote;

(II) The total value of shares of all classes of stock of each of the corporations; or

(III) The total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) A grantor and fiduciary of any trust;

(v) A fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) A fiduciary of a trust and a beneficiary of the trust;

(vii) A fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:

(I) The trust; or

(II) A person who is a grantor of the trust;

(viii) A person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) A corporation and a partnership or joint venture if the same persons own more than:

(I) 50 percent of the outstanding stock of the corporation; and

(II) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

(x) An S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xi) An S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xii) A partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or

(xiii) Two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(~~79~~82) **Rules--**The Department's Housing Tax Credit Program Qualified Allocation Plan and Rules as presented in this title.

(8~~0~~3) **Rural Area**~~--~~means ~~A~~a an area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 2~~0~~5,000 or less and does not share a boundary with an urban area; or

(C) In an Area that is eligible for ~~New Construction~~ funding by Texas Rural Development Office or the United States Department of Agriculture (~~TX~~TRDO-USDA-~~RHS~~), other than an area that is located in a municipality with a population of more than 50,000~~; or~~

~~(D) On a specific Development Site eligible for Rehabilitation funding by TX-USDA-RHS as evidenced by an executed TX-USDA-RHS letter indicating TX-USDA-RHS has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406.~~ (§2306.~~6702~~2004)

(8~~1~~4) **Rural Development**~~--~~means ~~A~~a Development or proposed Development that is located ~~within~~ a Rural Area, other than rural new construction Developments with more than 80 units. ~~A Rural Development may not exceed 76 Units if involving any New Construction (excluding New Construction of non-residential buildings).~~

(825) **Selection Criteria**--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §4950.9(i) of this title.

(836) **Set-Aside**--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (§2306.6702)

(847) **State Housing Credit Ceiling**--The limitation on the aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3)(C).

(858) **Student Eligibility**--Per the Code, §42(i)(3)(D), A unit shall not fail to be treated as a low-income unit merely because it is occupied:

(A) By an individual who is:

(i) A student and receiving assistance under Title IV of the Social Security Act (§42U.S.C. §§601 et seq.), or

(ii) Enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) Entirely by full-time students if such students are:

(i) Single parents and their children and such parents and children are not dependents (as defined in §152) of another individual, or

(ii) Married and file a joint return.

(869) **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 the Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(8790) **Third Party**--A Third Party is a Person who is not an:

(A) Applicant, General Partner, Developer, or General Contractor, or

(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor, or

(C) ~~Person(s)~~ receiving any portion of the contractor fee or developer fee.

(8891) **Threshold Criteria**--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §4950.9(h) of this title. (§2306.6702)

(8992) **Total Housing Development Cost**--The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(903) ~~TX~~TRDO-~~USDA-RHS~~--~~The Rural Housing Services (RHS)~~Texas Rural Development Office (TRDO) of the United States Department of Agriculture (USDA) serving the State of Texas (also known as USDA Rural Development and formerly known as TxFmHA) or its successor.

(914) **Unit**--Any residential rental unit 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 (such as a microwave), and sanitation. (§2306.6702) For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 649 square feet or less is considered an efficiency Unit, a Unit with 650 to 899 square feet is considered not more than a one-bedroom Unit, a Unit with 900 to 999 square feet is considered not more than a two-bedroom Unit, a Unit with 1000 to 1199 square feet is considered not more than a three-bedroom Unit, and a Unit with 1200 square feet or more is considered a four bedroom Unit.

(9~~2~~5) **Urban/~~Exurban~~ Area**--~~Non-Rural Areas located within the boundaries of a metropolitan Area as designated by the US Office of Management and Budget as of November 1, 2006, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), the date Volume III is submitted to the Department.~~means the Area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an Area described in subparagraph (~~84~~)(B) or eligible for funding as described in subparagraph (~~84~~)(C) of this subsection.

§~~49~~50.4.State Housing Credit Ceiling.

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service. The Department shall publish each such determination in the Texas Register within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. As permitted by the Code, §42(h)(4), Housing Credit Allocations made to Tax-Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§~~49~~50.5.Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

(a) **Ineligibility.** An Application is ineligible if:

(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

(2) The Applicant, Development Owner, Developer or Guarantor 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 years preceding the Application deadline; or

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; or

(5) (§2306.6703(a)(1)) 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) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over housing tax credits employed by the Department.

(6) (§2306.6703(a)(2)) The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) The Applicant proposes to maintain for a period of 30 years or more 100 percent of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for

occupancy by individuals and families earning not more than 50 percent of the Area Median Gross Income, adjusted for family size; and

(B) At least one-third of all the units in the Development are public housing units or Section 8 Development-based units; or,

(7) The Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of 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 reservation is made by the Texas Bond Review Board) unless the Applicant: (§2306.6703(a)(4))

(A) Has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development; and

(B) Has included in the Application a written statement of support from that governing body. This statement must reference~~ing~~ this rule and authorize~~ing~~ an allocation of housing tax credits for the Development;

(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than ~~April 2, 2007~~April 1, 2008 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or

(8) The Applicant proposes ~~to construct a new development proposing~~ New Construction (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(A) Serves the same type of household as the new ~~development~~, regardless of whether the development serves families, elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction); or

(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) 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 Volume I is submitted); and

(C) Has not been withdrawn or terminated from the Housing Tax Credit Program.

~~(D)~~ An Application is not ineligible under this paragraph if:

(i) The Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (§42U.S.C. §12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (§42U.S.C. §5301 et seq.); or

(ii) The Development is located in a county with a population of less than one million; or

(iii) The Development is located outside of a metropolitan statistical area; or

(iv) The local government 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 subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the local government vote or evidence required ~~by subparagraph (D) of this paragraph~~ must be received by the Department no later than ~~April 2, 2007~~ (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

~~(E)~~ In determining the age of an existing Development as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §~~49~~50.9(j) of this title.

(9) A submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to

Having (D) + (E) as subsections is problematic because they do not follow the list suggested by "that:".

this section, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibly will be included in the termination letter to the Applicant.

(b) **Disqualification and Debarment.** The Department will disqualify an Application, and/or debar a Person ~~(see §2306.6721, Texas Government Code)~~, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

(1) The provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or

(2) The Applicant, Development ~~Owner~~, Developer or Guarantor or anyone that ~~has Controlling ownership interest in~~ the Development Owner, Developer or Guarantor ~~that~~ is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in §60 of this title on May 1, ~~2007~~2008 for Competitive Housing Tax Credit Applications or for Tax-Exempt Bond Developments Applications or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; (§2306.6721(c)(3)) or

~~(3) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an incidence of Material Noncompliance with the LURA or the program rules in effect for such tax credit property as further described in §60 of this title on May 1, 2007 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; or~~

(~~4~~3) The Applicant, Development Owner, Developer, or any Guarantor, or any Affiliate of such entity has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department~~.~~; or

(~~5~~4) The Applicant or the Development Owner ~~that~~ is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees or penalties within 30 days of when they were billed by the Department, as further described in §~~49~~50.20 of this title; or

(~~6~~5) ~~The~~ An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by ~~the~~ an Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date ~~an~~ Applications ~~is~~are filed in an Application Round and ending on the date the Board makes a final decision with respect to ~~any~~ the approval of ~~that~~any Application in that Application Round, unless the communication takes place at any board meeting or public hearing held with respect to that Application but not during a recess or other non-record portion of the meeting or hearing. Communication with Department staff must be in accordance with §~~49~~50.9(b) of this title; violation of the communication restrictions of §~~49~~50.9(b) is also a basis for disqualification and/or debarment. (§2306.1113)

(~~7~~6) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(~~8~~7) Applicants may be ineligible as further described in §~~49.17(d)(8)~~50.5 of this title.

(8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity ~~whose~~ previous funding contracts or commitments have been partially or fully deobligated due to a failure to meet contractual obligations during the 12 months prior to the submission of the applications.

(9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity ~~whose~~ pre-development award from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

(c) **Certain Applicant and Development Standards.** Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that: (§2306.223)

(1) The Development is not necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford;

(2) The Development Owner undertaking the proposed Development will not supply well-planned and well-designed housing for individuals or families of low and very low-income or families of moderate income;

(3) The Development Owner is not financially responsible;

(4) The Development Owner has contracted, or will contract for the proposed Development with, a 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) Has breached a contract with a public agency and failed to cure that breach; or

(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(5) The financing of the housing Development is not a public purpose and will not provide a public benefit; and/or

(6) The Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner.

(d) **Representation by Former Board Member or Other Person.** (§2306.6733)

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over housing tax credits previously employed by the Department may not:

(A) For compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceased;

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

(2) A Person commits a criminal offense if the Person violates §2306.6733. An offense under this section is a Class A misdemeanor.

(e) **Due Diligence, Sworn Affidavit.** In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may

request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven business days of the date of the request by the Department, the Department may terminate the Application.

(f) **Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.** An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §~~49~~50.9(d)(4) of this title. They may also utilize the appeals process described in §~~49~~50.17(b) of this title. (§2306.6721(d))

§~~49~~50.6.Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

(a) **Floodplain.** Any Development proposing New Construction or Reconstruction and located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation, with the exception of Developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for New Construction.

(b) **Ineligible Building Types.** Applications involving Ineligible Building Types as defined in §~~49~~50.3(~~52~~55) of this title will not be considered for allocation of tax credits.

(c) **Scattered Site Limitations.** Consistent with §~~49~~50.3(31) of this title, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units. Tax-Exempt Bond Developments are permitted to be located on multiple sites consistent with Section 1372, Texas Government Code and as further clarified by the Texas Bond Review Board.

(d) **Credit Amount.** The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development, adjusted annually for CPI (consumer price index) and published once each year in the Application Reference Manual prior to the Application Round. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Competitive Housing Tax Credits approved by the Board during the ~~2007~~2008 calendar year, including commitments from the ~~2007~~2008 Credit Ceiling and forward commitments from the ~~2008~~2009 Credit Ceiling, are applied to the credit cap limitation for the ~~2007~~2008 Application Round. In order to evaluate this $2 million limitation, Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. In order to encourage the capacity enhancement of inexperienced developers ~~in rural areas~~, the Department will prorate the credit amount allocated in situations where an ~~Application is submitted in the either the Rural Regional Allocation or the Urban Regional Allocation and the Development has 76 Units or less~~. The Department will prorate the credits based on the percentage ownership, if there is an inexperienced Developer is working with an experienced Developer on an Application. of the Developer entity

ownership interest, or the proportional percentage of the developer fee received, if this applies to a Developer without an ownership interest. To be considered for this provision, a copy of ~~a Joint Venture Agreement~~ and narrative on how this builds the capacity of the inexperienced developers is required. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Developments Applications will not count towards the total limit on tax credits per Applicant. The limitation does not apply (§2306.6711(b)):

(1) To an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) To the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

(3) To a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds, grants or social services; and

(4) To a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer ~~(or 20% for Qualified Nonprofit Developments)~~, or $150,000, whichever is greater.

(e) **Limitations on the Size of Developments.**

(1) The minimum Development size will be 16 Units if the Development involves Housing Tax Credits. The minimum Development size will be 4 Units if the funding source only involves the Housing Trust Fund or HOME Program.

(2) Rural Developments involving any New Construction (excluding New Construction of non-residential buildings) will be limited to ~~76~~80 Units (this ~~includes~~ individual Tax-Exempt Bond Developments). Rural Developments involving only Rehabilitation (excluding Reconstruction) do not have a size limitation.

(3) Urban Developments involving any New Construction (excluding New Construction of non-residential buildings), ~~that are not Tax-Exempt Bond Developments,~~ will be limited to 252 Total Units, wherein the maximum Department ~~administered~~ Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 Total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation ~~only~~ may exceed the maximum Unit restrictions.

(4) For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced, unless a market study supports the absorption of additional units) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months or a resolution is submitted with the Application from the local political authority stating there is an additional need and the market study supports the additional units.

(f) **Limitations on the Location of Developments.** Staff will only recommend, and the Board may only allocate, housing tax credits from the Credit Ceiling to more than one Development from the Credit Ceiling in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's allocation of credits, the Development is considered to be in the calendar year in which the Board votes, not in the year of the Credit Ceiling. This limitation applies only to ~~communities contained within~~ counties with populations exceeding one million (which for calendar year ~~2007~~2008 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this rule, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)) This restriction does not apply to the allocation of housing tax credits to Developments financed through the Tax-Exempt

Bond program, including the Tax-Exempt Bond Developments Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (§2306.67021)

(g) **Limitations of Development in Certain Census Tracts.** Staff will not recommend and the Board will not allocate housing tax credits for a Competitive Housing Tax Credit or Tax Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless the Applicant:

(1) In an area whose population is less than 100,000;

(2) Proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or,

(3) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the governing body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April ~~21~~, ~~2007~~2008 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Developments Applications no later than 14 days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the ~~2007~~2008 Housing Tax Credit Site Demographic Characteristics Report.

(h) **Limitations on Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will only recommend a 30% increase in Eligible Basis:

(1) If the Development proposing to build in a Hurricane Rita Gulf Opportunity Zone (Rita GO Zone), which was designated as a Difficult to Develop Area as determined by HB4440, is able to be placed in service by December 31, ~~2008~~2010 (or date as revised by the Internal Revenue Service) as certified in the Application; or,

(2) The Development is located in a Qualified Census Tract that has less than 40% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a Qualified Census Tract that has in excess of 40% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development site pursuant to the Code, §42(d)(5)(C), unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). These ineligible Qualified Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(i) **Rehabilitation Costs.** Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead and general requirements) unless financed with ~~TX-USDA-RHS~~TRDO-USDA in which case the minimum is $6,000.

(j) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

(k) **Appeals and Administrative Deficiencies for Site and Development Restrictions.** An Application or Development found to be in violation under subsections (a) - (~~k~~) of this section will be notified in accordance with the Administrative Deficiency process described in §~~49~~50.9(d)(4) of this title. They may also utilize the appeals process described in §~~49~~50.17(b) of this title.

§~~49~~50.7.Regional Allocation Formula; Set-Asides; Redistribution of Credits.

(a) **Regional Allocation Formula.** §2306.1115 ~~A~~as required by §2306.111(d), Texas Government Code, the Department uses a regional distribution formula developed by the Department and commented on by the public to distribute credits from the State Housing Credit Ceiling to all urban/~~exurban~~ areas and rural areas. ~~The formula is based on the need for housing assistance, and the availability of housing resources in those urban/exurban areas and rural areas, and the Department uses the information contained in the Department's annual state low income housing plan and other~~

~~appropriate data to develop the formula.~~ This formula establishes separate targeted tax credit amounts for rural areas and urban~~/exurban~~ areas within each of the Uniform State Service Regions. Each Uniform State Service Region's ~~targeted~~ tax credit amount will be published on the Department's web site. The regional allocation for rural areas is referred to as the Rural Regional Allocation and the regional allocation for urban~~/exurban~~ areas is referred to as the Urban~~/Exurban~~ Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each ~~calendar year~~ shall be allocated to Developments in Rural Areas with a minimum of $500,000 for each uniform state service region. (§2306.111(d-3) ~~At least 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS, that meet the definition of a Rural Development, do not exceed 76 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2007 Housing Tax Credits" form by the Pre-Application submission deadline. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will be considered under this set-aside. Any Rehabilitation or Reconstruction of an existing 515 development that retains the 515 loan and restrictions, regardless of the source or nature of additional financing, will be considered under this set-aside. Commitments of 2007 Housing Tax Credits issued by the Board in 2006 will be applied to each Set-Aside, Rural Regional Allocation, Urban/Exurban Regional Allocation and TX-USDA-RHS Allocation for the 2007 Application Round as appropriate.~~

(b) **Set-Asides.** An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (§2306.111(d))

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Qualified Nonprofit Development applying for this Set-Aside. If the ~~organization's~~ Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the ~~organization's~~ Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit set-aside must have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (§2306.6729 and §2306.6706(b))

as adaptive reuse

(2) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which are financed through TRDO-USDA, that meet the definition of a Rural Development, do not exceed 80 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2008 Housing Tax Credits" form by the Pre-Application submission deadline. (2306.111(d-2) These Developments will be attributed to the At-Risk set-aside. Developments financed through TRDO-USDA's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside. Any Rehabilitation or Reconstruction of an existing 515 development that retains the 515 loan and restrictions, regardless of the source or nature of additional financing, will be considered under the At-Risk and USDA set-aside. Commitments of 2008 Competitive Housing Tax Credits issued by the Board in 2007 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Allocation for the 2008 Application Round as appropriate.

Development

(Should this be TRDO-USDA?

(~~2~~3) At least 15% of the ~~allocation to each Uniform State Service Region~~ State Housing Credit Ceiling for each calendar year will be ~~set aside for~~ allocated~~ion~~ under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments designated as At-Risk Developments as defined in §~~49~~50.3(13) of this title. (§2306.6714). To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §~~49~~50.3(13)(A) of this title, or

This is a separate thought that belongs somewhere else. Perhaps a new section (4)?

provide evidence that it will renew, retain or preserve the financial benefit described in §4950.3(13)(A) of this title; and must have filed an "Intent to Request ~~2007~~2008 Housing Tax Credits" form by the Pre-Application submission deadline. Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO.

(c) **Redistribution of Credits.** (§2306.111(d)) If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Set-Asides, Rural Regional Allocation and Urban/~~Exurban~~ Regional Allocation ~~within each Uniform State Service Region and among the Set-Asides~~, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §4950.9(d) of this title, the need to most closely achieve regional allocation goals and then the level of demand exhibited in the Uniform State Service Regions during the ~~Allocation~~Application Round~~.~~, except that, if there are any tax credits set aside for Developments in a Rural Area in a specific uniform region that remain after the allocation under §50.9(d)(5)(C), those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region.(2306.111(d-3)) ~~However a~~As described in subsections (b)(1-2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

State Service

§4950.8.Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results (§2306.6704).

(a) **Pre-Application Submission.** Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §4950.20 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized though not required to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) **Communication with the Department.** Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §4950.9(b) of this title. (§2306.1113)

(c) **Pre-Application Evaluation Process.** Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Applications that are associated with a ~~TX-USDA-RHS~~TRDO-USDA Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §4950.9(i)(14) of this title. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §4950.9(d)(4) of this title. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.

(d) **Pre-Application Threshold Criteria and Review.** Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(1) Submission of a "Pre-Application Submission Form" and "Certification of Pre-Application Itemized Self-Score". The applicant may not change the Self-Score unless requested by the Department in a Deficiency Notice; ~~and~~

(2) Evidence of property control through ~~March 1, 2007~~February 29, 2008 as evidenced by the documentation required under §~~49~~50.9(h)(7)(A) of this title~~.~~; and

(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under subparagraph (A) of this paragraph must be made by the deadlines described in that clause; notifications under subparagraph (C) of this paragraph must be made prior to the close of the Pre-Application Acceptance Period. (§2306.6704) Evidence of notification must meet the requirements identified in subparagraph (B) of this paragraph to all of the individuals and entities identified in subparagraph (C) of this paragraph. (§2306.6704)

(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(i) No later than December ~~8, 2006~~7, 2007, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Pre-Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format.

(ii) If no reply letter is received from the local elected officials by January 1, ~~2007~~2008, then the Applicant must certify to that fact in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as ~~outlined~~ provided by the local elected officials, or that the Applicant has knowledge of as of Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(B) Not later than the date the Pre-Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-Application Notification Template" provided in the Pre-Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application, although it is encouraged that Applicants retain proof of notifications in the event that the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(i) Neighborhood Organizations on record with the city, state or county whose boundaries include the proposed Development Site as identified in subparagraph (A)(iii) of this paragraph.

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the governing body of any municipality containing the Development;

(vi) Presiding officer of the governing body of the county containing the Development;

(vii) All elected members of the governing body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, 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) Statement of whether the Development proposes New Construction, Reconstruction, or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing, or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

approximate (?)

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(e) **Pre-Application Results.** Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §~~49~~50.9(i)(~~13~~14) of this title, 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 Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

§~~49~~50.9.Application: Submission; Ex Parte Communications ~~with Department Employees~~; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the ~~2008~~2009 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.

with all required copies

(a) **Application Submission.** Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §~~49~~50.20 of this title, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. A searchable electronic copy

of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order they appear in the hard copy of the complete Application on a CD-R clearly labeled with the report type, Development name, and Development location is required for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw ~~their~~ Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (§2306.6708) An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any set-asides, increase ~~their~~ credit amount, or revise ~~their~~ unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §~~49~~50.3(1) of this title or by amendment of an Application after a commitment or allocation of tax credits as further described in §~~49~~50.17(d) of this title.

~~(b) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1)-(3) of this subsection. Section 49.5(b)(6) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.~~

~~(1) The communication must be restricted to technical or administrative matters directly affecting the Application;~~

~~(2) The communication must occur or be received on the premises of the Department during established business hours (emails may be sent and received after business hours);~~

~~(3) A record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication. (§2306.1113)~~

(b) Ex Parte Communications.

(1) During the period beginning on the date ~~project applications are filed in an application cycle~~ and ending on the date the board makes a final decision with respect to the approval of any application in that ~~cycle~~, a member of the board may not communicate with the following persons:

(A) an Applicant or related party, ~~as defined by state law, including board rules, and~~ federal law; and

(B) any person who is:

(i) active in the construction, rehabilitation, ownership, or control of the proposed ~~project~~, including:

(I) a general contractor; and

(II) a principal or affiliate of a general partner or contractor; or

(ii) employed as a consultant, lobbyist, or attorney by an Applicant or a related party.

(2) During the period beginning on the date ~~project Applications are filed in an Application Cycle~~ and ending on the date the Board makes a final decision with respect to the approval of any Application in ~~the cycle~~, an employee of the Department may communicate about ~~the~~ Application with the following persons:

(A) the Applicant or a related party, ~~as defined by state law, including board rules and federal law~~; and

(B) any person who is:

(i) active in the construction, rehabilitation, ownership, or control of the proposed ~~project~~, including:

(I) a general partner or contractor; and

(II) a principal or affiliate of a general partner or contractor; or

(ii) employed a s a consultant, lobbyist or attorney by the Applicant or a related party.

(3) A communication under Subsection (2) may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(A) the communication must be restricted to technical or administrative matters directly affecting the Application;

(B) the communication must occur or be received on the premises of the Department during established business hours; and

(C) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:

(i) the date, time, and means of communication;

(ii) the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant;

(iii) the subject matter of the communication; and

(iv) a summary of any action taken as a result of the communication.

(4) Notwithstanding ~~Subsection (1) or (2)~~, a Board member or Department employee may communicate without restriction with a person listed in Subsection ~~(a)~~ or ~~(a-1)~~ during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.

(5) Subsection (1) 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 all matters related to Applications to be considered by the Board will not be discussed.

(c) **Adherence to Obligations.** (§2306.6720, General Appropriation Act, Article VII, Rider 8(a)) All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. ~~Effective December 1, 2006, i~~If a Development Owner does not produce the Development as represented in the Application ~~and in any amendments approved~~; does not receive approval for an amendment to the Application by the Department ~~subsequent to the Application~~prior to implementation of such amendment~~,~~; or does not provide the necessary evidence for any points received by the required deadline:

(1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) The Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) Reduce the score for Applications for Competitive Housing ~~t~~Tax ~~c~~Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming

Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was ~~identified~~ recognized by the Department of the need for the amendment; ~~and~~ the placed in service date; or the date the amendment is accepted by the Board.

(B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to ~~12~~24 months from the date that the non-conforming aspect, or lack of financing, was ~~identified~~ recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.

(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph §50.9(c)(2) will not be imposed, except if the amendment has been implemented prior to the date of the notice granting the request.

(d) **Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling.** Applications submitted for competitive consideration under the State Housing Credit Ceiling will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §~~49~~50.5; Applicants will be promptly notified in these instances.

(1) Set-Aside and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility for Set-Asides. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (i) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every application.

(2) ~~Priority~~ Application Review Assessment. Each Application will be assessed based on either the Applicant's self-score or the Department's preliminary score, region, and any Set-Asides that the Application indicates it is eligible for, consistent with paragraph (5) of this subsection. Those Applications that appear to be most competitive will be ~~designated as "priority" Applications. Applications that do not appear to be competitive may not be~~ reviewed in detail for Eligibility and Threshold Criteria during the Application Round. ~~The designation of priority is not a stage of the application pursuant to §49.11(a)(7) of this title, and the designations will not be posted to the Department's website until final scoring notices are issued.~~

(3) Eligibility and Threshold Criteria Review. Applications that ~~are designated as "priority" from the Priority Review Assessment~~appear to be most competitive will be evaluated for eligibility under §§~~49~~50.5(a)(7) - (9), ~~(c), (e), and~~ (b) - (f), and ~~49~~50.6 of this title. The remaining portions of the Eligibility Review under §~~49~~50.5 of this chapter will be performed in the Compliance Evaluation and Eligibility Review as described under paragraph (7) of this subsection. ~~Priority~~ The most competitive Applications will also be evaluated against the Threshold Criteria under subsection (h)~~(1) - (4), (7)(A) and (B), (8), (9), (11), and (15)~~ of this section~~, at minimum~~. The ~~remaining~~ same portions of the Threshold Criteria review may be performed in the Underwriting Evaluation and Criteria review for financial feasibility by the Department's Real Estate Analysis Division as described under paragraph (6) of this subsection. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in ~~which~~ each event the Applicant ~~is~~will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation,

alters the score assigned to the Application, Applicants will be notified of their final score. ~~As Applications are evaluated under this Review process, a final score by the Department may remove the Application from "priority" status at which point other Applications may be designated as "priority" and reviewed under this paragraph.~~

(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §~~49~~50.3(1) of this title which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department ~~within~~by 5:00 p.m. on the ~~five~~fifth business days following the date of the deficiency notice ~~date~~, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected ~~within~~by 5:00 p.m. on the seventh business days following the date of~~from~~ the deficiency notice ~~date~~, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

(5) Subsequent Evaluation of ~~Prioritized~~ Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those applications identified as ~~"priority"~~most competitive and that meet the requirements of Eligibility and Threshold. This ~~prioritization order~~ will also be used in making recommendations to the Board as follows:

(A) Assignments will be determined by ~~first~~ separately selecting the Applications with the highest scores in the At-Risk Set-Aside Statewide~~and TX-USDA-RHS Allocation within each Uniform State Service Region~~ until the minimum requirements stated in §~~49~~50.7(b) of this title are attained.

(B) Assignments will then be determined by selecting the Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §50.7(b) of this title are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk 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.

(~~B~~C) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §~~49~~50.7(a) of this title, without exceeding the credit amounts available for a Rural Regional Allocation and Urban~~/Exurban~~ Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region.

(~~C~~D) ~~Funds for the Rural Regional Allocation or Urban/Exurban Regional Allocation for which there are more requests for credits than remaining credits available will be combined in each Uniform State Service Regions. If the next eligible application in the Rural Allocation or Urban/Exurban for a given Uniform State Service Region is less than the remaining credits in a region, then that application is selected; however, if both Rural and Urban/Exurban areas in the region have Applications that are requesting less than the remaining credits in that Uniform State Service Region, then the Application in the sub-region whose shortfall of credits being recommended would have been the most significant portion of their targeted sub-regional allocation will be selected. All credits still remaining will be combined with the remaining credits from all other regions and will be allocated to an Application in the sub-region whose shortfall of credits being recommended would have been the most significant portion of their targeted sub-regional allocation. However, once a region's awarded credits~~

~~exceeds the total allocation for that region no other applications will be selected.~~ If there are any tax credits set-aside for Developments in a Rural Area in a specific uniform region that remain after allocation under subparagraph (C) of this paragraph those tax credits shall 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 Rural sub-region target (2306.111(d-3)). This will be referred to as the Rural collapse.

(E) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural or Urban allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region target. This will be referred to as the statewide collapse.

(~~DF~~) ~~After this priority review has occurred,~~ sStaff will ~~review priority applications to ensure that at least~~ 10% of the ~~priority applications are~~State Housing Credit Ceiling is allocated to qualified Nonprofits to satisfy the Nonprofit Set-Aside. If 10% is not met, then the Department will add the highest scoring Qualified Nonprofits statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban~~/Exurban~~ Regional Allocation. Funds for the Rural Regional Allocation or Urban~~/Exurban~~ Regional Allocation within a region, for which there are no eligible feasible applications, will be redistributed as provided in §~~49~~50.7(c) of this title, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §~~49~~50.6(d) of this title, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting set-aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive ~~h~~Housing ~~t~~Tax ~~c~~Credits are allocated within the period required by law. (§2306.6710(a)~~, (b) and~~ (~~d~~f); §2306.111)

(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application ~~to~~ determine the financial feasibility of the Development and an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in §50.3(1) of this title or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this title. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under §~~49~~50.9(i)(1) of this title does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. ~~(§2306.6711(b); §2306.6710(d))~~(§2306.6710 and §2306.11)

General

(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant. The Developer's fee limits will be calculated as follows:

(i) New construction pursuant to §42(b)(1)(A) U.S.C, the developer fee cannot exceed 15% of the project's Total Eligible Basis, less developer fees, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less; and

(ii) Acquisition/rehabilitation developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C, the acquisition portion of the developer fee cannot exceed 15% of the existing structures acquisition basis, less developer fee, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the developer fee cannot exceed 15% of the total rehabilitation basis, less developer fee, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less.

s if the Development Proposes 50 total Units or more

(7) Compliance Evaluation and Eligibility Review. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with ~~Chapter~~ §60 of this title, and will be evaluated in detail for eligibility under §§~~49~~50.5(a)~~(1) - (5), (b), and~~ (~~d~~f) of this title. Development

(8) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the ~~TX-USDA-RHS~~TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by ~~TX-USDA-RHS~~TRDO-USDA.

(e) **Evaluation Process for Tax-Exempt Bond Development Applications.** Applications submitted for consideration as Tax-Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §~~49~~50.5 of this title; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Tax-Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax-Exempt Bond Development Applications will be confirmed for eligibility under §~~49~~50.5 and §~~49~~50.6 of this title and Applications will be evaluated in detail against the Threshold Criteria. Tax-Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in ~~which~~each event the Applicant ~~is~~will be given an opportunity to correct such deficiencies. Applications not meeting the Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to

This language should match 50.9(d)(4) for purposes of consistency.

satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. ~~Not all Applications will be reviewed in detail for Threshold Criteria.~~

(2) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies ~~within~~by 5:00 p.m. on the ~~5~~fifth business days following the date of~~from~~ the deficiency notice ~~date~~ will result in a penalty fee of $500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the ~~10~~tenth day following the date of~~from the issuance of~~ the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this section regardless of any termination pursuant to §50.5(b)(4) of this ~~section~~title. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

(3) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60, Subchapter A of this title.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(f) **Evaluation Process for Rural Rescue Applications Under the ~~2008~~2009 Credit Ceiling.** Applications submitted for consideration as Rural Rescue Applications pursuant to §~~49~~50.10(c) of this title under the ~~2008~~2009 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §~~49~~50.5 of this title; Applicants will be promptly notified in these instances.

~~(1) Eligibility and Threshold Criteria Review. All Rural Rescue Applications will first be reviewed as described in this paragraph. Rural Rescue Applications will be confirmed for eligibility under §49.5 and §49.6 of this title, Set-Aside and Rural Rescue eligibility will be confirmed, and Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not~~

Shouldn't this match 50.9(d)(7)? See comment.

~~confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.~~

(1) Procedures for Intake and Review.

(A) Applications for Rural Rescue deals may be submitted between March 2, 2008 and November 15, 2008 and must be submitted in accordance with §50.21 of this title. A complete Application must be submitted at least 40 days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §50.20(c) of this title. Applicants must submit documents in accordance with the procedures set out in the 2008 Application Submission Procedures Manual for Volumes I, II, III and IV. Volume IV, evidencing Selection Criteria, MUST be submitted.

(B) Applicants do not need to participate in the Pre-Application process outlined in §50.8 of this title, nor will they need to submit pre-certification documents identified in §50.9(g) of this title.

(C) Applications will be processed on a first-come, first-served basis. Applications unable to meet all deficiency and underwriting requirements within 30 days of the request by the Department, will remain under consideration, but will lose their submission status and the next application in line will be moved ahead in order to expedite those applications most able to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(D) Prior to the Development being recommended to the Board, TRDO-USDA must provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, as provided in §50.9(d)(8) of this title.

(2) Eligibility Review. All Rural Rescue Applications will first be reviewed as described in this paragraph and eligibility will be confirmed pursuant to §50.5 and §50.6 of this title and the criteria listed in subparagraph (A-C) below. Applications found to be ineligible will be notified.

(A) Applications must be funded through TRDO-USDA;

(B) Applications must able to provide evidence that the loan:

(i) has been foreclosed and is in the TRDO-USDA inventory; or

(ii) is being foreclosed; or

(iii) is being accelerated; or

(iv) is in imminent danger of foreclosure or acceleration; or

(v) is for an application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) through (iv) of this item and for which the application is submitted under one ownership structure, one financing plan an for which there are no market rate units. and

(C) Applicants must be identified as in compliance with TRDO-USDA regulations.

(3) Threshold Review. Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(~~2~~4) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria and a score will be assigned to the Application. The minimum score for Selection Criteria is not required to be achieved to be eligible.

(~~3~~5) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as further described in subsection (d)(4) of this section.

(~~4~~6) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Rural Rescue Applications meeting the eligibility and threshold requirements for review for

financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits as further described in subsection (d)(6) of this section. Rural Rescue Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(~~5~~7) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(~~7~~8) Credit Ceiling and Applicability of this title. All Rural Rescue Applicants will receive their credit allocation out of the 2009 Credit Ceiling and therefore, will be required to follow the rules and guidelines identified in the Qualified Allocation Plan and Rules (QAP). However, because the 2009 QAP will not be in effect during the time period that the Rural Rescue applications can be submitted, applications submitted and eligible under the Rural Rescue Set-Aside will be considered by the Board to have satisfied the requirements of the 2009 QAP and are waived from 2009 QAP requirements that are changes from the 2008 QAP, to the extent permitted by statute.

(~~8~~9) Procedures for Recommendation to the Board. Consistent with §50.9(k) of this title, staff will make its recommendation to the Committee. The Committee will make commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §50.10(a) of this title. Any award made to a Rural Rescue Development will be credited against the USDA Set-Aside for the 2009 Application Round, as required under §50.9(d)(5).

(~~9~~10) Limitation on Allocation. No more than $350,000 in credits will be forward committed from the 2009 credit ceiling. To the extent applications are received that exceed the maximum limitation, staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

(g) **Experience Pre-Certification Procedures.** No later than 14 days prior to the close of the Application Acceptance Period for Competitive Housing Tax Credit Applications, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond ~~Developments~~ Applications or Applications not applying for Competitive Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in ~~their~~ Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a principal for the purpose of this requirement. If the individual requesting the certification was not ~~the~~ Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the units ((responsibility for work associated with the development of units includes, but is not limited to, application submission, third-party engagement, post award activities, construction, cost certification, etc.)), the individual must show that the units were successfully developed as required below, and ~~also~~ provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least $~~6~~12,000 of direct hard cost per unit.

(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(A) At least 100 residential units or, if less than 100 residential units, 80 percent of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

making this language consistent with the opening part of the paragraph.

(B) At least 36 residential units if the Development is a Rural Development; or

(C) At least 25 residential units if the Development has 36 or fewer total Units.

(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, ~~partner (or if Applicant is to be a limited liability company, the managing member)~~, Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

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

(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, ~~partner (or if Applicant is to be a limited liability company, the managing member)~~, Developer or their Principals as listed in the Application; and

(C) The number of units completed ~~or substantially completed~~.

~~that~~ that must be included

(h) **Threshold Criteria.** The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

(1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. (§2306.1111)

(2) Completion and submission of the Site Packet as provided in the Application.

(3) Set-Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding as required in the Application.

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. All Developments must meet at least the minimum threshold of points. These points are not associated with the selection criteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item. Applications for non-contiguous scattered site housing, including New Construction, Reconstruction, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §~~49~~50.17(d) of this title and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) as follows:

(I) Total Units are less than 13, 0 points are required to meet Threshold for Single Room Occupancy and 1 point is required to meet threshold for all other Developments;

(II) Total Units are between 13 and 24, 1 point is required to meet Threshold;

(III) Total Units are between 25 and 40, 3 points are required to meet Threshold;

(IV) Total Units are between 41 and 76, 6 points are required to meet Threshold;

(V) Total Units are between 77 and 99, 9 points are required to meet Threshold;

(VI) Total Units are between 100 and 149, 12 points are required to meet Threshold;

(VII) Total Units are between 150 and 199, 15 points are required to meet Threshold;

(VIII) Total Units are 200 or more, 18 points are required to meet Threshold.

(ii) Amenities for selection include those items listed in subclauses (I) - (~~XXIV~~ XXVII) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

See comment

(I) Full perimeter fencing (2 points);
(II) Controlled gate access (1 point);
(III) Gazebo w/sitting area (1 point);
(IV) Accessible walking/jogging path separate from a sidewalk (1 point);
(V) Community laundry room with at least one front loading washer (1 point);
(VI) ~~Emergency 911 telephones accessible and available to tenants 24 hours a day (2 points);~~
(VII) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);
(VIII) Covered pavilion that includes barbecue grills and tables (2 points);
(IX) Swimming pool (3 points);
(X) Furnished fitness center equipped with at least five of the following fitness equipment options: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair climber, etc.) (2 points);
(XI) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine (2 points);
(XII) Furnished Community room (1 point);
(XIII) Library with an accessible sitting area (separate from the community room) (1 point);
(XIV) Enclosed sun porch or covered community porch/patio (2 points);
(XV) Service coordinator office in addition to leasing offices (1 point);
(XVI) Senior Activity Room (Arts and Crafts, etc.)~~--Only Qualified Elderly Developments Eligible~~ (2 points);
(XVII) Health Screening Room (1 point);
(XVIII) Secured Entry (elevator buildings only)(1 point);
(XIX) Horseshoe pit, putting green or shuffleboard court~~-Only Qualified Elderly Developments Eligible~~ (1 point);
(XX) Community Dining Room w/full or warming kitchen~~-Only Qualified Elderly Developments Eligible~~ (3 points);
(XXI) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot~~--Only Family Developments Eligible~~ (1 Point)
(XXII) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each~~-Only Family Developments Eligible~~ (2 points);
(XXIII) Sport Court (Tennis, Basketball or Volleyball)~~-Only Family Developments Eligible~~ (2 points); ~~or~~
(XXIV) Furnished and staffed Children's Activity Center~~-Only Family Developments Eligible~~ (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);

capitalize?

This is not a defined term.

(XXVI) Green Building (for example, passive solar heating/cooling, water conserving fixtures, collected water (at least 50%) for irrigation purposes, sub-metered electric meters, exceed energy star standards, photovoltaic panels for electricity and design and wiring for the use of such panels, construction waste management, provide recycle service, water permeable walkways and parking areas, or other Department approved items). (3 points); or

(XXVII) Hot Tub/Jacuzzi Spa (1 point).

(B) A certification that the Development will have all of the following ~~Unit~~ Amenities ~~(not required for Single Room Occupancy Developments)~~at no charge to the tenants. ~~If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy this requirement. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.~~ All New Construction or Reconstruction Units must provide the amenities in (i)-(ix) of this subparagraph. Rehabilitation (excluding Reconstruction) and Adaptive Reuse must provide the amenities in (ii)-(ix) of this subparagraph unless expressly identified ~~as not required~~. (§2306.187)

(i) All New Construction Units must be wired with 6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit;

(ii) Blinds or window coverings for all windows;

(iii) Energy-Star or equivalently rated Dishwasher and Disposal (not required for ~~TX-USDA-RHS~~TRDO-USDA or SRO Developments);

(iv) Energy-Star or equivalently rated (not required for SRO Developments) Refrigerator;

(v) Energy-Star or equivalently rated Oven/Range (not required for SRO Developments);

(vi) Exhaust/vent fans in bathrooms; ~~and~~

(vii) Energy-Star or equivalently rated Ceiling fans in living areas and bedrooms;

(viii) Energy-Star or equivalently rated Lighting in all Units;

(ix) Emergency 911 telephone accessible and available to tenants 24 hours a day.

(C) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(D) A certification that the Applicant is 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 (§42U.S.C. §3601 et seq.), and the Fair Housing Amendments Act of 1988 (§42U.S.C. §3601 et seq.); the Civil Rights Act of 1964 (§42U.S.C. §2000a et seq.); the Americans with Disabilities Act of 1990 (§42U.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, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(F) Pursuant to §2306.6722, any Development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third

party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C and this subparagraph. (§§2306.6722 and 2306.6730)

(G) Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) 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. ~~A similar~~ certification ~~will also be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.~~

(H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(I) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 Texas Government Code and as further described in §1.37 of this title.

(K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a neighborhood organization for purposes of subsection (i)(2) of this section, has not given money or a gift to cause the neighborhood organization to take its position of support or opposition, nor has provided any assistance to a neighborhood organization to meet the requirements under subsection (i)(2) of this section which are not allowed under that subsection, as it relates to the Applicant's Application or any other Application under consideration in 2007.

(L) ~~A certification that the Development Owner will cooperate with the local public housing authority, to the extent there are any, in accepting tenants from their waiting lists (§42(m)(1)(C)(vi))~~Operate in accordance with the requirements pertaining to rental assistance in §60 of this title.

(M) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co head of households.

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) - (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (iii) of this subparagraph are required:

(i) A site plan which:

(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) Identifies all residential and common buildings and amenities; and

(III) Clearly delineates the flood plain boundary lines and all easements shown in the site survey;

(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive reuse Developments, are only required to provide building plans

for adaptive reuse — For — The Applicant must provide a

of compliance with this subsection from the Development engineer, an accredited engineer or Department-approved third party accessibility specialist

Term is not defined, but you might consider doing that.

delineating each unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and

(iii) Unit floor plans for each type of Unit showing special accessibility and energy features. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application. Adaptive reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, -two-bedroom) and for all Units types that vary in area by 10% from the typical Unit; and

(B) A boundary survey of the proposed Development site and of the property to be purchased. In cases where more property is purchased than the proposed ~~site of the~~ Development, the survey or plat must show the survey calls for both the larger site and the ~~subject~~ site. The survey does not have to be recent; but it must show the property purchased and the property proposed for the Development. In cases where the ~~site of the~~ Development is only a part of the site being purchased, the depiction or drawing of the Development ~~portion~~ may be professionally compiled and drawn by an architect, engineer or surveyor.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) - (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (§2306.6705(1))

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of housing tax credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), if permitted under §~~49~~50.6(h) of this title, Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Rehabilitation Developments must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.

(F) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) - (D) of this paragraph:

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 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 (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided, and if the acquisition can be characterized as an identity of

interest transaction as described in §1.32~~(e)(1)(B)~~ of this title, items described in clause (iv) of this subparagraph must also be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Developments Applications, site control must be valid through December 1, ~~2006~~2007 with option to extend through March 1, ~~2007~~2008 (Applications submitted for lottery) or 90 days from the ~~date of the~~ bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

(iv) If the acquisition can be characterized as an identity of interest transaction as described in §1.32~~(e)(1)(B)~~ of this title, subclauses (I), ~~and~~ (II) and (III) of this clause ~~must be provided~~will be required (not required at Pre-Application):

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement indicating the asset value for the ~~proposed~~ Property, and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the application,

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection, and

(-b-) Any other verifiable costs of owning, holding, or improving the Property 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, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the Property, the cost of rezoning, replatting or developing the Property, or any costs to provide or improve access to the Property.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained 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, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow 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.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) plus costs identified in subparagraph (b), or the "as-is" value conclusion evidenced by subclause (II)(a).

(v) As described in clauses (ii) and (iii) of this subparagraph, Property control must be continuous. Closing on the Property is acceptable, as long as evidence is provided that there was no period in which control was not retained.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction or Reconstruction Developments, Aa letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) tThe Development is located within the boundaries of a political subdivision which does not have a zoning ordinance; and either (II) or (III) of this subparagraph

(II) tThe letter must ~~also~~ state that the Development ~~fulfills a need for additional affordable rental housing as evidenced in~~ is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists~~, then the letter from the local municipal authority must state that there is a need for affordable housing~~.

(ii) For New Construction or Reconstruction Developments, ~~A~~a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) ~~In the case of a~~For Rehabilitation Development, ~~if~~ the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction which ~~discusses~~addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

(C) Evidence of interim and permanent financing sufficient to fund the proposed ~~Total Housing Development Cost less~~ any other ~~funds requested from the~~ Department and any other sources documented in the Application. ~~Any~~ local, state or federal financing identified in this section which restricts household incomes at any ~~AMGI lower than restrictions~~ required pursuant to the Rules must be identified in the Rent Schedule and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with ~~Internal Revenue Code~~ §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the housing tax credit LURA and monitored throughout the extended use period~~continuously maintained over the compliance and extended use period as specified in the LURA~~. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) - (iv) of this subparagraph:

(i) Bona fide financing in place as evidenced by:

(I) A valid and binding loan agreement;

(II) Deed(s) of trust in the name of the Development Owner expressly allowing transfer to the Development Owner; and

(III) For ~~TX-USDA-RHS~~TRDO-USDA 515 Developments involving ~~Rehabilitation~~, an executed ~~TX-USDA-RHS~~TRDO-USDA letter indicating ~~TX-USDA-RHS~~TRDO-USDA has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406 and a copy of the original loan documents; or,

(ii) Bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) Any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application ~~as evidenced by~~:

(I) Evidence from the lending agency that an application for funding has been made or from the Applicant indicating an intent to apply for funding; and

(II) A term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made ~~and~~ any commitment ~~issued~~, ~~must be submitted~~; and

(III) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the Application Submission Procedures Manual; ~~and~~

(IV) If the commitment from any funding source identified in this subparagraph has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the funding source, the Commitment Notice may be rescinded; or

(iv) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clauses (i) - (iii) of this subparagraph:

(i) A copy of the full legal description for the Development Site, and

(ii) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the ~~proposed Property~~ Development Site, and

(iii) A copy of:

(I) The current title policy which shows that the ownership (or leasehold) of the ~~land~~ Development Site is vested in the exact name of the Development Owner; or

(II) a current title commitment with the proposed insured matching exactly the name of the Development Owner and the title of the ~~Property~~ Development Site vested in the exact name of the seller or lessor as indicated on the sales contract or lease, option

(III) If the title policy or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(8) Evidence in the form of a certification of all of the notifications described in the subparagraphs of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from Pre-Application to Application or as a result of a deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly, Intergenerational Housing or family). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three months prior to the date the Volume III of the Application is submitted.

(i) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(I) No later than January 15, ~~2007~~2008 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Applications, Rural Rescue, or Applications not applying for Tax

Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., not later than 21 days prior to submission of the Threshold documentation), the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format.

(II) If no reply letter is received from the local elected officials by February 25, 2007, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application), then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application.

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(ii) Not later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Application Notification Certification Form" provided in the Application, although it is encouraged that Applicants retain proof of notifications in the event that the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the governing body of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, 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) Statement of whether the Development proposes New Construction, Reconstruction, or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

approximate (?)

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code. Scattered site Developments must install a sign on each Development Site. For Competitive Housing Tax Credit Applications the date, time and location of the public hearing, as published by the Department and closest to the Development site, must be included on the sign. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond Tax Exempt Fiscal Responsibility Act (TEFRA) public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the bond hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. ~~As~~In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant ~~may instead, at the Applicant's option~~shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. ~~If the Applicant chooses to provide this mailed notice in lieu of signage, t~~The final Application must include a map of the proposed Development site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. ~~If the option in clause (i) of this subparagraph is used, then e~~Evidence ~~must be provided affirming the signage violation to the local code~~ and the local zoning notification requirements must be submitted in the Application of the applicable ordinance or code

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification, or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that ~~they have~~ it has notified each tenant at the Development ~~and let the tenants know of the Department's public hearing schedule for comment on submitted Applications~~ with all the information otherwise required for the sign.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) - (D) of this paragraph.

(A) Chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, 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,

In addition, if the Public Notification Sign is prohibited by local ordinance or code,

public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State; or

(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority.

(C) Evidence 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 and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The ~~2007~~2008 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are 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 Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (g)(1) of this section. Applicants must request this certification at least fourteen days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) - (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of Application for such funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement. (§2306.6705(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate. ~~If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one that most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.~~

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph.

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to ~~its~~ the Applicant's inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided; and

(II) A rent roll not more than 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, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) For Intergenerational Applications or Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

(v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal agency. (§2306.6705(6))

~~(11)~~ Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit ~~General Partner~~, must submit all of the documents described in clauses (i) and (ii) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609: (§2306.6706)

(i) An IRS determination letter which states that the nonprofit organization is a 501(c)(3) or (4) entity or ; and

(ii) The "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §~~49~~50.7(b)(1) of this title, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (iii) of this subparagraph.

(i) A Third Party legal opinion stating:

(I) That the nonprofit organization is not affiliated with or Controlled by a forprofit organization and the basis for that opinion, and

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must ~~be the~~ controlling Managing Member; and otherwise meet the requirements of the Code, §42(h)(5),

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing, and

(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, and

(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; and

(ii) A copy of the nonprofit organization's most recent audited financial statement; and

(iii) Evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) In this state, if the Development is located in a Rural Area; or

(II) Not more than 90 miles from the Development, if the Development is not located in a Rural Area.

(12) Applicants applying for acquisition credits must provide must provide

(A) An appraisal meeting the requirements of subparagraph (14)(D) of this subsection, and

(B) An "Acquisition of Existing Buildings Form."

(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of ten percent or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(A) Financial statements for an individual must not be older than 90 days from the first day of the Application Acceptance Period.

(B) Financial statements for partnerships or corporations should be for the most recent fiscal year ended 90 days from the first day of the Application Acceptance Period. An audited financial statement should be provided, if available, and all partnership or corporate financials must be certified. Financial statements are required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual.

(C) Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case.

(14) Supplemental Threshold Reports. All Applications must include documents under subparagraphs (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraph (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions must meet the requirements stated in subparagraphs (E) - (G) of this paragraph.

(A) A Phase I Environmental Site Assessment (ESA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three 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; and

(iii) Prepared in accordance with the Department's Environmental Site Assessment Rules and Guidelines, §1.35 of this title.

(iv) Developments whose funds have been obligated by ~~TX-USDA-RHS~~TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) A comprehensive Market Analysis report:

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the methodology prescribed in the Department's Market Analysis Rules and Guidelines, §1.33 of this title.

(iv) For Applications in the ~~TX-USDA-RHS~~TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required under paragraphs (7) or (12) of this subsection and prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title, 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) A Property Condition Assessment (PCA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Department's Property Condition and Assessment Rules and Guidelines, §1.36 of this title.

(iv) For Developments which require a capital needs assessment from ~~TX-USDA-RHS~~TRDO-USDA, the capital needs assessment may be substituted and may be more than 6 months old, as long as ~~TX-USDA-RHS~~TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable.

(D) An appraisal report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title.

(iv) For Developments that require an appraisal from ~~TX-USDA-RHS~~TRDO-USDA, the appraisal may be more than 6 months old, as long as ~~TX-USDA-RHS~~TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

(G) The requirements for each of the reports identified in subparagraphs (A) - (C) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April ~~21~~21, ~~2007~~2008. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, April ~~21~~21, ~~2007~~2008. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(iii) A single hard copy of the report and a searchable soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not adjust the Application Self Scoring Form without a request from the Department as a result of an Administrative Deficiency.

(i) **Selection Criteria.** All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, use normal rounding. Points other than paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of ~~TX-USDA-RHS~~TRDO-USDA Applications, must receive a final score totaling a minimum of ~~105~~111, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: ~~215~~228.

(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)) Applications may qualify to receive 28 points for this item. No partial points will be awarded. Evidence will include the documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection (h)(7)(C) of this section. The supporting financial data shall include:

(A) A fifteen year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen years.

(C) For Developments receiving financing from ~~TX-USDA-RHS~~TRDO-USDA, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans"_ or other form deemed acceptable by the Department shall meet the requirements of this section.

(2) Quantifiable Community Participation from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site. Points will be awarded based on written statements of support or opposition from ~~n~~Neighborhood ~~o~~Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. (§2306.6710(b)(1)(B); §2306.6725(a)(2)). It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under subsection (h)(8)(A)(ii)~~(I)~~ of this section if the organization provides the information and documentation required below. It is also possible that neighborhood organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring.

The deleted language is more clear than the proposed new language.

(A) Basic Submission Requirements for Scoring. Each ~~n~~Neighborhood ~~o~~Organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received or postmarked (or similar tracking system) by the Department no later than ~~March1, 2007~~February 29, 2008, for letters relating to Applications that submitted a Pre-Application, or ~~April 2, 2007~~April 1, 2008 if a Pre-Application was not submitted. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Neighborhood Input)." Letters received after the applicable deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

(i) State the name and location of the proposed single Development ~~on which input is provided. A letter may provide input on only one proposed Development; if an organization is eligible to provide input on additional Developments, each Development must be addressed in a separate letter~~;

(ii) Certify that the letter is signed by the person with the authority to sign on behalf of the neighborhood organization, and provide:

(A) the ~~s~~street and/or mailing addresses;~~,~~

(B) day and evening phone numbers;~~,~~ , if any,

(C) and e-mail addresses and/or facsimile numbers for the signer of the letter; and

(D) for one additional contact including their contact information for the organization;

(iii) Certify that the organization has boundaries, ~~and~~ that the boundaries in effect ~~December 1, 2006~~February 29, 2008 contain the proposed Development site;

(iv) Certify that the organization ~~is a~~meets the definition of "~~n~~Neighborhood ~~o~~Organization as defined in §50.3(62) of this title." For the purposes of this section, a "~~n~~Neighborhood ~~o~~Organization" is defined as an organization of persons living near one another within the organization's defined boundaries in effect ~~December 1, 2006~~February 29, 2008 that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood organizations" do not include broader based "community" organizations.~~; organizations that have no members other than board members; chambers of commerce; community development corporations; churches; school related organizations; Lions, Rotary, Kiwanis, and similar organizations; Habitat for Humanity; Boys and Girls Clubs; charities; public housing authorities; or any governmental entity. Organizations whose boundaries include an entire county or larger area are not "neighborhood organizations", unless the large organization is a parent organization of smaller organizations whose purpose, and composition would otherwise meet the requirements of this definition. Organizations whose boundaries include an entire city are generally not "neighborhood organizations", unless the city organization is a parent organization of smaller organizations whose purpose, and composition would otherwise meet the requirements of this definition.~~

(v) Include documentation showing that the organization is on record as of ~~December 1, 2006~~February 29, 2008 with the state or county in which the Development is proposed to be located. The receipt of a QCAP letter, by the Department on or before February 29, 2008, that meets the requirements outlined in the QCP neighborhood information packet and the 2008 QAP, will constitute being on record with the State. ~~A record from the Secretary of State showing that the organization is incorporated or from the county clerk showing that the organization is on record with the county is sufficient. For a property owners association, a record from the county showing that the organization's management certificate is on record is sufficient. The documentation must be from the state or county and be current. If an organization's status with the Secretary of State is shown as "forfeited," "dissolved," or any similar status in the documentation provided by the organization, the organization will not be considered on record with the state, unless corrected in a deficiency response. It is insufficient to be "on record" to provide only a request to the county or a state entity to be placed on record or to show that the organization has corresponded with such an entity or used its services or programs. There are two options to be considered on record with the Department (and thereby the state):~~

~~(I) The neighborhood organization may submit a letter from the city showing that the organization was on record with a city as of December 1, 2006 may be submitted with the QCP Package to place the organization on record with the state effective December 1, 2006; or~~

~~(II) The~~ neighborhood organization ~~may~~ must include in ~~their~~ its submit a letter, ~~including~~ a contact name with a mailing address and phone number; and a written description and ~~map~~ of the organization's geographical boundaries, as well as proof that the boundaries described were in effect as of ~~December 1, 2006~~February 29, 2008. ~~Under this option, a certification will not suffice. This~~ request must be received no later than ~~February 15, 2007~~February 29, 2008. Acceptance of this documentation will be subject to ~~by the~~ Department approval. ~~will be effective December 1, 2006 and will satisfy the "on record with the state" requirement, but is not a determination that the organization is a "neighborhood organization" or that other requirements are met. The Department is permitted to issue a deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state.~~

(vi) Accurately certify that the ~~n~~Neighborhood ~~o~~Organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered, with the exception of an identity of interest, to be an agent of the Application) in the ~~2007~~2008 Competitive Housing Tax Credit Application Round, that the organization ~~and~~ any member ~~did not~~ accept money or a gift to cause the neighborhood organization to take its position of support or opposition, ~~and has not~~ provided any assistance other than education and information sharing to the neighborhood organization to meet the requirements of this subparagraph for any application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the ~~n~~Neighborhood ~~o~~Organization, or referring the ~~n~~Neighborhood ~~o~~Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph). ~~Applicants may not request Neighborhood Organizations to change their boundaries to include the Development site.~~

(vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the developer to this meeting.

~~(viii) The organization must accurately certify that the boundaries in effect December 1, 2006 include the proposed Development Site and acknowledge in the certification that annexations occurring after that time to include a Development site will not be considered eligible. A Development site must be entirely contained within the boundaries of the organization to satisfy eligibility for this item; a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.~~

(ix) Letters from Neighborhood ~~o~~Organizations, and subsequent correspondence from Neighborhood ~~o~~Organizations, may not be provided via the Applicant which includes facsimile and email communication.

(B) Scoring of Letters (and Enclosures). The input must clearly and concisely state each reason for the Neighborhood ~~o~~Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will range from a maximum of +24 for the position support to +12 for the neutral position to 0 for a position of opposition. The number of points to be allocated to each organization's letter will be based on the organization's letter and evidence enclosed with the letter. The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and ~~n~~Neighborhood ~~o~~Organizations for more information. The Department may consider any relevant information specified in letters from other ~~n~~Neighborhood ~~o~~Organizations regarding a Development in determining a score.

(ii) The Department highly values quality public input addressed to the merits of a Development. Input that points out matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by

the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the ~~n~~Neighborhood ~~o~~Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. 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.

(iii) In general, letters that meet the requirements of this paragraph and:

(I) Establish at least one reason for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero);

(II) That do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points).

(iv) Applications ~~for which there are~~ multiple eligible letters ~~received~~, ~~are~~ the average score will be applied to the Application.

(v) Applications for which no letters from neighborhood organizations are scored will receive a neutral score of +12 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the ~~n~~Neighborhood ~~o~~Organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail address or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within seven business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the applicable deadlines ~~deadline~~ except in response to an e-mail or facsimile from the Department specifically requesting additional information.

(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding ~~rent levels~~ that do not exceed 30% of the income limitation in accordance with §42(g), ~~Internal Revenue Code~~. (§2306.6710(b)(1)(C); §2306.111(g)(3)(B); §2306.6710(e); §42(m)(1)(B)(ii)(I); §2306.111(g)(3)(E))

(A) 22 points if at least 80% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI; or

~~(B) 22 points if at least 10% of the Total Units in the Development are set-aside with incomes at or below 30% of AMGI; or~~

(C) 20 points if at least 60% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(D) 18 points if at least 10% of the Total Units in the Development are set-aside with incomes at or below 30% of AMGI; or

~~(D) 18 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI; or~~

(E) 16 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

Consider whether adaptive reuse should also receive the points automatically, given the challenges of configuration.

(F) 14 points if at least 35% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI.

(4) The Size and Quality of the Units (Development Characteristics). Applications may qualify to receive up to 20 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii))

(A) Size of the Units. Applications may qualify to receive 6 points. The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from ~~TX-USDA-RHS~~TRDO-USDA, or Developments proposing single room occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted below. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted below, will be re-evaluated and may result in a reduction of the Application score.

(i) 500 square feet for an efficiency Unit;

(ii) 650 square feet for a non-elderly one Bedroom Unit; 550 square feet for an elderly one Bedroom Unit;

(iii) 900 square feet for a non-elderly two Bedroom Unit; 750 square feet for an elderly two Bedroom Unit;

(iv) 1,000 square feet for a three Bedroom Unit; and (excluding Reconstruction)(?)

(v) 1,200 square feet for a four Bedroom Unit.

Making this consistent with (h)(4)(A) under Threshold.

(B) Quality of the Units. Applications may qualify to receive up to 14 points. Applications in which Developments 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 clauses (i) - (xix) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation or single room occupancy may receive 1.5 points for each point item, not to exceed 14 points in total.

(i) Covered entries (1 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (2 points);

(viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);

(ix) Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units (3 points);

(x) Thirty year architectural shingle roofing (1 point);

(xi) Covered patios or covered balconies (1 point);

(xii) Covered parking (including garages) of at least one covered space per Unit (2 points);

(xiii) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points);

(xiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 points);

(xv) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (3 points).

(xvi) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);

How does this compare to the Green Building standards on p. 35?

(xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (3 points); ~~(WG)~~

~~(xviii) Energy Star rated refrigerators and dishwashers (2 points); or~~

(~~xix~~xviii) High Speed Internet service to all Units at no cost to residents (2 points)~~.~~; or

(xix) Fire sprinklers in all Units (2 points).

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for ~~qualifying under this paragraph provided for under~~ Development Funding as described under this paragraph. (§2306.6710(b)(1)(E))

(A) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).

~~(i) Evidence must be submitted in the Application that the proposed Development has received or will receive qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision, as defined in this title.~~

(ii) The ~~loans, grant(s) or in-kind contribution(s)~~ must be attributed to the Total Housing Development Costs, as defined in this title, unless otherwise stipulated in this section.

(iii) An Applicant may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, five sources may not be submitted if each source is for an amount equal to 5% of the Total Housing Development Cost.

(iii~~iv~~) An Applicant may substitute any source in response to a Deficiency Notice or after the Application has been submitted to the Department.

(iv) A loan does not qualify as an eligible source unless it has a minimum ~~1-year~~5-year term and the interest rate must be at the Applicable Federal Rate (AFR) or below ~~(at the time of application~~

(v~~i~~) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development ~~will be acceptable to qualify for these points.~~ The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to §4950.9(h)(7) of this title to qualify. The value of in-kind contribution may only include the time period between award, or August 1, 2008 and the Development's Placed in Service date. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(vii) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the Application Acceptance ~~deadline,~~ is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular application. TDHCA's ~~HOME~~ funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance ~~deadline~~ and a resolution is submitted with the substitution documentation from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular application.

(vii~~i~~) Development based rental subsidies may qualify under this section if evidence of the ~~remaining~~ value of the contract is submitted from the Local Political Subdivision. The value of the contract does not include ~~past~~ subsidies.

(viii~~ix~~) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding that indicates the funding entity and program to which the application will be submitted, the loan amount

to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted in the Application from Local Political Subdivision substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the Local Political Subdivision for the ~~sufficient local~~ funding ~~to the Department~~. If the funding commitment from the Local Political Subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's ~~funds~~, the Commitment Notice will be rescinded and the credits reallocated.

(xi) Funding commitments from a Local Political Subdivision will not be considered final unless the Local Political Subdivision attests to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with §4950.9(e) of this title. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying ~~loan(s), grants or in-kind contributions~~ from a Local Political Subdivision pursuant to (A) of this subsection.

(i) A total contribution equal to or greater than 1% of the Total Housing Development Cost of the Development receives 6 points; or

(ii) A total contribution equal to or greater than 2.5% of the Total Housing Development Cost of the Development receives 12 points; or

(iii) A total equal to or greater than 5% of the Total Housing Development Cost of the Development receives 18 points.

(6) The Level of Community Support from State ~~Elected Officials~~Representative or State Senator. The level of community support for the application, evaluated on the basis of written statements received from the ~~s~~State ~~elected officials~~Representative or State Senator that represents the district containing the proposed Development Site. (§2306.6710(b)(1)(F) and (f)~~and (g)~~; §2306.6725(a)(2)) Applications may qualify to receive ~~up to~~ 14 points for this item. ~~Points will be awarded based on the written statements of support or opposition from state elected officials representing constituents in areas that include the location of the Development.~~ Letters of support must identify the specific Development and must 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 ~~official~~ the State Representative or Senator by April ~~2~~1, ~~2007~~2008. ~~Officials~~ State Representatives or Senators to be considered are those ~~officials~~ State Representatives or Senaotrs in office at the time the Application is submitted. Letters of support from ~~state officials~~State Representatives or Senators that do not represent ~~constituents in areas that include the location of the~~ the district containing the proposed Development site will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are ~~7 points each for a maximum of +~~14 points; opposition letters are ~~-7 points each for a maximum of -~~14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points.

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (§2306.6710(b)(1)(G)) If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 7 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If greater than 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 12 points.

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this subparagraph only, if the proposed Development is an elevator building serving elderly or a high rise building serving any population, the NRA may include elevator served interior corridors. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $85 per square foot for Qualified Elderly, single family design, transitional, and single room occupancy Developments (transitional housing for the homeless and single room occupancy units as provided in the Code, §42(i)(3)(B)(iii) and (iv)), unless located in a "First Tier County" in which case their costs do not exceed $87 per square foot; and $75 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $77 per square foot. For ~~2006~~2007, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. Intergenerational developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly units as determined by using the NRA attributable to the respective elderly and non-elderly units. The Department will determine if points will be awarded by multiplying the NRA for elderly units by the applicable square footage limit for the elderly units and adding that total to the result of the multiplication of the NRA for family units by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the application, points will be awarded(10 points).

(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. ~~Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph.~~ (§2306.6710(b)(1)(I); ~~§2306.254;~~ §2306.6725(a)(1); General Appropriation Act, Article VII, Rider 7)

~~(A) Applicants will receive points for coordinating their tenant services with those services provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).~~

~~(B)~~ The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this subparagraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

(I) Two points will be awarded for providing two of the services; or

(II) Four points will be awarded for providing four of the services; or

(III) Six points will be awarded for providing six of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other programs described under Title IV-A of the Social Security Act (§42 (§42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; ~~any services addressed by §2306.254 Texas Government Code;~~ or any other services approved in writing by the Department.

In addition,

(iii) Applications will receive 2 points for providing Notary Public Services to tenants at no cost to the tenant. This will be included in the LURA.

(10) Declared Disaster Areas. Applications may receive 7 points, if at time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development site is located in a Disaster Area as defined in §50.3.

Not defined.

(~~10~~11) Rehabilitation, ~~or~~ (which includes Reconstruction) or Adaptive Reuse Applications may qualify to receive ~~7~~6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), or solely Reconstruction (excluding New Construction of non-residential buildings) qualify for points.

A definition would probably help.

(~~11~~12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)) Applications may qualify to receive up to ~~7~~6 points. Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.

(~~12~~13) Development Includes the Use of Existing Housing as part of a Community Revitalization Plan (Development Characteristics). Applications may qualify to receive ~~7~~6 points for this item. (§42(m)(1)(C)(iii)) The Development is an Existing Residential Development and proposed any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the governing body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(~~13~~14) Pre-Application Participation Incentive Points. (§2306.6704) Applications that submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the Pre-Application;

(B) Have met the Pre-Application Threshold Criteria;

(C) Be serving the same target population (family, Intergenerational Housing, or elderly) as in the Pre-Application;

(D) Be serving the same target Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (~~16~~18) of this of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at Pre-Application will also include all point losses under 50.9(d)(4). An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

What about point deductions for extensions, removal, and adherence to obligations?

associated with being located in such a zone or area

(i) To request the Pre-Application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from Pre-Application to Application; or

(ii) To request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(15) Economic Development Initiatives. A Development that is located in one of the following two areas may qualify to receive 4 points: e applicable program and will allocate

(1) a Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map from a city/county official stating that the proposed Development is located within such a designated zone or area; is eligible to receive the state or federal economic development grants or loans; and the ~~city/county~~ still has available funds. The letter should be no older than 6 months from the first day of the Application Acceptance Period. VII, Rider 6; §2306.127); or funds to the Development

(2) an area that has received an award as of November 1, 2007, within the past three years from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program. Grants that qualify in these areas are included in the Application Reference Manual.

(3) Points under subparagraph (1) and (2) will not be granted if more than 3 tax credit Developments have been awarded in that area in the last 7 years.

(~~14~~16) Development Location. (§2306.6725(a)(4)); §42(m)(1)(C)(i)) Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the first day of the Application Acceptance Period, that the ~~subject Property~~ is located within one of the geographical areas described in subparagraphs (A) - (~~G~~E) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (~~G~~E) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A) - (~~G~~E) of this paragraph. e Development Site

(A) A geographical Area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (§2306.127).

~~(B) A designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 6 months from the first day of the Application Acceptance Period. (General Appropriation Act, Article VII, Rider 6; §2306.127)~~

(~~C~~B) The Development is located in a county that has received an award as of ~~November 15, 2006~~November 1, 2007, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(~~D~~C) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(~~E~~D) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone of an elementary school that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

Is the defined term appropriate here?

(~~F~~E) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. Intergenerational Developments may qualify for points if 70% of the non-elderly Units in the Development have an eligible bedroom mix of two bedrooms or more. (§42(m)(1)(C)(vii)) These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(F) The proposed Development will be located in an area with no other existing Qualified Elderly Developments supported by housing tax credits.

(~~15~~17) ~~Exurban Developments (Development characteristics)~~Location in non-urban Areas~~).~~ ~~(§2306.6725(a)(4); §~~42(m)(1)(C)(i)) Applications may qualify to receive ~~7~~6 points if the Development is not located in a Rural Area and has a population less than 100,000 based on the most current Decennial Census.

(~~16~~18) Demonstration of Community Support other than Quantifiable Community Participation: If an Applicant requests these points on the self scoring form and correctly certifies to the Department that there are no neighborhood organizations that meet the Department's definition of Neighborhood Organization pursuant to §~~49~~50.9(~~7~~)(2)(A)(iv)3(62) of this title and 12 points were awarded under paragraph (2) of this subsection, then that Applicant may receive two points for each letter of support submitted from a community or civic organization that serves the community in which the site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located to include, but not be limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this item, community and civic organizations do not include neighborhood organizations, governmental entities, taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO as that is a service organization even though it supports an educational activity. Letters of support received after ~~March 1, 2007~~February 29, 2008, will not be accepted for this item. Two points will be awarded for each letter of support submitted in the Application, not to exceed ~~7~~6 points. Should an Applicant elect this option and the Application receives letters in opposition by ~~March 1, 2007~~February 29, 2008, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community. At no time will the Application, however, receive a score lower than zero for this item.

(~~17~~19) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits: The Application may receive ~~7~~6 points if the proposed Development is located in a census tract in which there are no other existing developments supported by housing tax credits. Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)) These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(~~18~~20) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (§42(m)(1)(C)(v)) The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs. 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 a minimum 12 month period during which units must either be occupied by persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a Certificate of Occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the owner will no longer be required to hold units vacant for ~~household~~s with special needs, but will be required to continue to affirmatively market units to ~~household~~ with special needs.

E Persons

(~~19~~21) Length of Affordability Period. Applications may qualify to receive up to 4 points. (§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); §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 are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (2 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (4 points)

(~~20~~22) Site Characteristics. Development Sites, including scattered sites, will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria below.

(A) Proximity of site to amenities. Developments Sites located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive four points. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has "on demand" transportation, special transit service, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or on demand service, then this will be a requirement of the LURA. Only one service of each type listed below will count towards the points. A map must be included identifying the Development site and the location of the services. The services must be identified by name on the map. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (4 points)

(i) Full service grocery store or supermarket
(ii) Pharmacy
(iii) Convenience Store/Mini-market
(iv) Department or Retail Merchandise Store
(v) Bank/Credit Union
(vi) Restaurant (including fast food)
(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries
(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools
(ix) Hospital/medical clinic
(x) ~~Doctor's~~ Medical offices (~~medical~~physician, dentistry, optometry)
(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments)
(xii) Senior Center ~~(only eligible for Qualified Elderly Developments)~~
(xii) Dry cleaners
(xiii) Family video rental (Blockbuster, Hollywood Video, Movie Gallery)

(B) Negative Site Features. Development Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development site. The distances are to be measured from all boundaries of the Development site to all boundaries of the property containing the negative site feature. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-5 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, 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. Rural Developments funded through ~~TX-USDA-RHS~~TRDO-USDA are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.

(vi) Developments where the buildings are located adjacent to or within 300 feet of a sexually oriented business will have 1 point deducted from their score.

(vii) Developments where the buildings are located within the accident zones or flight paths for commercial or military airports.

(~~24~~23) Development Size. The Development consists of not more than 36 (3 points). 2 Units

(~~22~~24) Qualified Census Tracts with Revitalization. Applications may qualify to receive 1 point for this item. (§42(m)(1)(B)(ii)(III)) Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the governing body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(~~23~~25) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

(A) An Application will receive these two points for submitting a plan to use Historically Underutilized Businesses in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant 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.

(B) An Application will receive these points if there is evidence that a HUB that does not meet the experience requirements under subsection (g) of this section, as certified by the Texas Building and Procurement Commission, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced developer (as defined by §~~49~~50.9 of this title); the experienced developer, as an Affiliate, will not be subject to the credit limit described under §~~49~~50.6(d) of this title for one application per Application Round. For purposes of this section the experienced developer may not be a Related Party to the HUB.

(~~24~~26) Developments Intended for Eventual Tenant Ownership - Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1)) (§42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other

parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department,

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(~~25~~27) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Funding sources used for points under (i)(5) of this sub-section, may not be used for this point item.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal

What about funding sources under (15)?

resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (not using normal rounding) of the Total Housing Development Costs reflected in the Application.

(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, or qualifying substitute source, has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all low-income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(~~26~~28) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)) Evidence that the proposed Development has documented and committed ~~t~~Third-~~p~~Party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that ~~they~~ it is ~~are~~ not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the ~~t~~Third-~~p~~Party funding source and must be equal to or greater than 2% (not using normal rounding) of the Total Development costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The third-party funding source cannot be a loan from a commercial lender.

(~~27~~29) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2)) Housing

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of ~~a Department~~ the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a housing tax credit commitment made in the Application Round preceding the current round. ~~The extension that will receive a penalty is an extension related to the submission of the Carryover Allocation Agreement or the 10% Test pursuant to §49.14 of this title.~~ For each extension request made, the Applicant will receive a 5 point deduction. ~~for not meeting the Carryover deadline. Subsequent extension requests for carryover after the first extension request made for each Development from the preceding round will not result in a further point reduction than already described.~~ No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve ~~TX-USDA-RHS~~TRDO-USDA as a lender if ~~TX-USDA-RHS~~TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(C) Penalties ~~will~~ may be imposed on an Application ~~if Developer or Principal of the Applicant violates~~ pursuant to the Adherence to Obligations ~~pursuant to~~ requirements under subsection (c) of this section.

(j) **Tie Breaker Factors.**

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban~~/Exurban~~ Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per net rentable square foot ~~requested~~ (the lower credits per square foot has preference).

(D) Projects that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 15-year compliance period.

(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §4950.5(a)(8) of this title, and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the reservation docket number issued by the Texas Bond Review Board in making its determination. When two competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

Where does adaptive reuse fit here?

Change all to 2008?

(A) Tax-Exempt Bond Developments that receive their reservation from the Bond Review Board on or before April 30, 2007 will take precedence over the Housing Tax Credit Applications in the 2007 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2007 will take precedence over the Tax-Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2007 and July 31, 2007; and

(C) After July 31, 2007, a Tax-Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2007 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2007 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(k) **Staff Recommendations.** (§2306.1112 and §2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all factors provided in subsection §~~49~~50.10(a) of this section that were used in making this determination. §~~49~~50.10

§~~49~~50.10. Board Decisions; Waiting List; Forward Commitments

(a) **Board Decisions.** The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and Rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§2306.6725(c); §42(m)(1)(A)(iv); §2306.6731)

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (§2306.111(g)(3)~~; §2306.0661(f))~~

(A) The ~~developer~~ market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as determined by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (§2306.057)

(b) **Waiting List.** (§2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation and 15% At-Risk Set-Aside allocation and 5% USDA Set-Aside required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

TRDO-USDA (?)

(c) **Forward Commitments.** The Board may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules ~~and timelines required under this rule~~ and the Application Submission Procedures Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to ~~TX-USDA-RHS~~TRDO-USDA Developments which are experiencing foreclosure or loan acceleration at any time during the ~~2007~~2008 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the ~~2007~~2008 QAP and granted a Forward Commitment of ~~2008~~2009 Housing Tax Credits are considered by the Board to comply with the ~~2008~~2009 QAP by having satisfied the requirements of this ~~2007~~2008 QAP, except for statutorily required QAP changes.

(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

§~~49~~50.11.Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

(a) **Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.**

(1) Within approximately ~~seven business~~14 days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, Set-Aside, number of units, requested credits, owner contact name and phone number. (§2306.6717(a)(1))

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (§2306.1114)

(A) Publish an Application submission log on its web site.

(B) Give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) - (x) of this subparagraph. (§2306.6718(a) - (c))

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the governing body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development.

(iii) If the Department receives a letter from the mayor or county judge of an affected city or county that expresses opposition to the Development, the Department will give consideration to the objections raised and will offer to visit the proposed site or Development with the mayor or county judge or their designated representative within 30 days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate (General Appropriation Act, Article VII, Rider 5) (§42(m)(1));

(iv) Any member of the governing body of a political subdivision who represents the Area containing the Development. If the governing body has single-member districts, then only that member of the governing body for that district will be notified, however if the governing body has at-large districts, then all members of the governing body will be notified;

(v) State representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator host a community meeting, the Department, if timely notified, will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))

(vi) United States representative who represents the community containing the Development;

(vii) Superintendent of the school district containing the Development;

(viii) Presiding officer of the board of trustees of the school district containing the Development;

(ix) Any Neighborhood Organizations on record with the city or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and

(x) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's email list service.

(C) The Department shall maintain an electronic mail notification service that will notify a subscriber, by zip code, of: (§2306.67171)

(i) The receipt of a Pre-Application or Application within 14 days of receipt;

(ii) The publication of materials to be presented to the Board for the Pre-Application or Application referred to in subsection (i); and

(iii) Any public hearing for the Pre-Application or Application referred to in subsection (i).

(~~C~~D) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))

(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program for competitive Applications under the State Housing Credit Ceiling. (§2306.6717(c))

(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (§2306.6717(b))

(6) Approximately forty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. (§2306.6717(a)(3))

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will:

(A) Provide the Application scores to the Board; (§2306.6711(a))

(B) If feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §~~49~~50.19(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (§2306.6717(a)(1) and (2))

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for housing tax credits, the Department shall provide an Applicant who did not receive a commitment for housing tax credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (§2306.6711(e))

(b) **Viewing of Pre-Applications and Applications.** Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close,

respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) **Confidential Information.** The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code. (§2306.6717(d))

§~~49~~50.12.Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

(a) **Filing of Applications for Tax-Exempt Bond Developments.** Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year ~~2007~~2008 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 28, ~~2006~~2007. Such filing must be accompanied by the Application fee described in §~~49~~50.20 of this title.

(2) Applicants which receive advance notice of a Program Year ~~2007~~2008 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §~~49~~50.20 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Those applications designated as Priority 3 by the TBRB must submit Volumes I and II within 14 days of the bond reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is ~~being~~ requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission.

(3) Applications involving multiple sites must submit the required information as outlined in the Application Submission Procedures Manual. The Application will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

(b) **Applicability of Rules for Tax-Exempt Bond Developments.** Tax-Exempt Bond Development Applications are subject to all rules in this title, with the only exceptions being the following sections: §~~49~~50.4 of this title (regarding State Housing Credit Ceiling), §~~49~~50.7 of this title (regarding Regional Allocation and Set-Asides), §~~49~~50.8 of this title (regarding Pre-Application), §~~49~~50.9(d) and (f) of this title (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §~~49~~50.9(i) of this title (regarding Selection Criteria), §~~49~~50.10(b) and (c) of this title (regarding Waiting List and Forward Commitments), and §~~49~~50.14(a) and (b) of this title (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §~~49~~50.9(h) of this title. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. ~~Consistency with the local municipality's consolidated plan or similar planning document must be demonstrated in those instances where the city or county has a consolidated plan. If no such planning document exists then the Applicant must submit a letter from the local municipal authority stating such and that there is a need for affordable housing.~~ This documentation must be submitted no later than 14 days before the Board meeting where the credits will be considered. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §~~49~~50.15 of this title.

No later than 60 days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect at Department-approved Fair Housing training relating to design issues for at least five hours. Certifications must not be older than two years. Applications that receive a reservation from the Bond Review Board on or before December 31, ~~2006~~2007 will be required to satisfy the requirements of the ~~2006~~2007 QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, ~~2007~~2008 will be required to satisfy the requirements of the ~~2007~~2008 QAP.

(c) **Supportive Services for Tax-Exempt Bond Developments.** ~~(§2306.254)~~ Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) - (3) of this subsection include:

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

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

(3) Any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) **Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) **Satisfaction of Requirements for Tax-Exempt Bond Developments.** If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §~~4950~~.10(a) of this title in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(f) **Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the bond reservation expiration date, and subsequently have that docket number withdrawn from the Bond Review Board, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the Texas Bond Review Board. One of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four months from the date the original application was withdrawn from the BRB. The application must remain unchanged. This means that at a minimum, the following can not 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 (TDHCA issues) or BRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the applicant entity and developer can not 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 §~~4950~~.9(h)(8) of this title are not required to be reissued. In the event that the Department's Board has already approved the application for tax credits, the application is not required to be presented to the Board again (unless there is public opposition) and 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 days after the date the Bond Review Board issues the new docket number and no later than thirty days before the anticipated closing. 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. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than forty-five days before the anticipated Department's Board meeting date.

(2) If there are changing to the Application as referenced in paragraph (1) of this subsection, the Application 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.

§~~4950~~.13.Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

(a) **Commitment and Determination Notices.** If the Board approves an Application the Department will:

(1) If the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) State the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in §~~4950~~.16 of this title, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee

specified in §4950.20 of this title, and satisfies any other conditions set forth therein by the Department. ~~A Development Owner may request an extension of the Commitment Notice expiration date by submitting an extension request and associated extension fee as described in §49.20 of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.~~ The Commitment Notice expiration date may not be extended.

(2) If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §4950.12 of this title and compliance by the Development Owner with all applicable requirements of this title and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §4950.20 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

(3) Notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(4) 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, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low-income rental housing properties in the state of Texas administered by the Department~~, or outside the state of Texas,~~ that is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in §60 of this title.

(6) The executed Commitment or Determination Notice must be returned to the Department on the date specified with the Commitment Notice or Determination Notice, which shall be no earlier than ten days of the effective date of the Notice.

(b) **Agreement and Election Statement.** Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation was accepted (or the month the bonds were issued for Tax-Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable, to assure that the Carryover Allocation Document can be so executed.

(c) **Documentation Submission Requirements at Commitment of Funds.** No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment Fee as further described in §4950.20(f) of this title, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment to be rescinded. For each Applicant all of the following must be provided:

(1) Evidence that the entity has the authority to do business in Texas;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State;

(3) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement; and

(4) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws ~~which indicate same from the sub-entity in Control~~ and that those Persons signing the Application constitute all Persons required to sign or submit such documents.

§~~49~~50.14.Carryover; 10% Test; Commencement of Substantial Construction.

(a) **Carryover.** All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued pursuant to §42(h)(l)(c) IRC. Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month. If the financing structure, syndication rate, amount of debt or syndication proceeds are revised 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 reevaluated by the Department. The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All Carryover Allocations will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) The Development Owner for all New Construction Developments must have purchased ~~the property for~~ the Development Site

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) For all Developments involving New Construction, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(4) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, ~~2007~~2008.

(b) **10% Test.** No later than six months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than June 30 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual.

Need to exclude adaptive reuse and reconstruction

Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two years.

(c) **Commencement of Substantial Construction.** The Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in §60 of this title. The evidence must be submitted not later than December 1 of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §~~49~~50.20 of this title.

§~~49~~50.15.LURA, Cost Certification.

(a) **Land Use Restriction Agreement (LURA).** The Development Owner must request a LURA from the Department no later than the date specified in §60 of this title, the Department's Compliance ~~Monitoring Policies and Procedures~~Rules. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall ~~not~~ contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, ~~other than the AMGI levels reflected in the final Application (at the time of Board approval) or amendments to the Application made pursuant to §49.17(d) of this title, regardless of the underwriting methodology utilized in determining feasibility.~~ as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(b) **Cost Certification.** The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) To request IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;

(B) Scheduled a final construction inspection in accordance with §60 of this title, the Department's Compliance Monitoring Policies and Procedures;

(C) Informed the Department of and received written approval for all Development amendments in accordance with §~~49~~50.17(c) of this title;

(D) Submitted to the Department the LURA in accordance with §~~4950~~.15(a) of this title;

(E) Paid all applicable Department fees; and

(F) Prepared all Cost Certification documentation as more fully described in the ~~format prescribed by the~~ Cost Certification Procedures Manual. including:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Owner's Statement of Certification;

(iii) Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary;

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;

(xiv) Rent Schedule;

(xv) Utility Allowance;

(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;

(xvii) Current Annual Operating Statement and Rent Roll;

(xviii) Final Sources of Funds;

(xix) Executed Limited Partnership Agreement;

(xx) Loan Agreement or Firm Commitment;

(xxi) Architect's Certification of Fair Housing Requirements; and

(xxii) TDHCA Compliance Workshop Certificate.

(2) Required Cost Certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §~~4950~~.20(l) of this title.

(3) The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt and notify the Owner in a deficiency letter of all additional required documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than 90 days from the date that all required documents have been received.

(4) The Department will perform an evaluation to determine if~~of~~ the Applicant~~, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of the Development to determine if any entity~~ is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for ~~such~~the subject property, as described in §60 of the Department's Compliance ~~Monitoring Policies and Procedures~~Rules prior to issuance of IRS Forms 8609.

§~~4950~~.16.Housing Credit Allocations.

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Development Owner who receives a Housing Credit Allocation from the Department will qualify for the ~~housing~~ credit.

Need to be sure this does not adversely impact the availability of 8609's for situations where a general partner has been replaced and the substitute GP is trying to clean up any problems.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (§2306.6711(b)) Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §~~49~~50.9(h)(4)(H) of this title, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the commitment notice or carryover ~~agreement~~, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to ~~a member of~~ Affiliate of the ~~ownership entity proposed at the time of Application~~, the Department will transfer the allocation to the ~~ownership entity~~ as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §~~49~~50.17(c) of this title. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §~~49~~50.20 of this title have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax-Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party ~~accredited~~ accessibility ~~inspector~~ specialist to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a ~~housing~~ credit; provided, however, that where an

allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction threshold criteria and Development characteristics identified at application. At a minimum, all Development inspections must meet Uniform Physical Condition Standards (UPCS) as referenced in Treasury Regulation §1.42-5 (d)(2)(ii) and include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §~~49~~50.20 of this title. Details regarding the construction inspection process are set forth in the Department Rule §60 of this title, the Department's Compliance Monitoring Policies and Procedures (§2306.081; General Appropriation Act, Article VII, Rider 8(b)).

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §~~49~~50.15 of this title, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity.

This is contrary to the penalty provision that is imposed only if credits cannot be re-used.

(k) If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit applications submitted by that Applicant or any Affiliate of that Applicant for any application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

§~~4950~~.17.Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.

(a) **Board Reevaluation.** (§2306.6731(b)) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (d)(4) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) **Appeals Process.** (§2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-Application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria; and

(C) A recommendation as to the amount of housing tax credits to be allocated to the Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §~~4950~~.9 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(c) **Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application.** The Department will address information or challenges received from unrelated entities to a specific ~~2007~~2008 active Application, utilizing a preponderance of the evidence standard, ~~in the following manner~~as stated in (1)-(3) of this subparagraph, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than June 15, 2008:

(1) Within 14 business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website.

(2) Within seven business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven business days to respond to all information and challenges provided to the Department.

(3) Within 14 business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(d) **Amendment of Application Subsequent to Allocation by Board.** (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §~~49~~50.18 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments which require Board approval, the amendment request must be received by the Department at least 30 days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

or impose available penalties

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent;

(G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

(H) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the ~~original Application~~Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply. For amendments that involve a reduction in the total number of low-income Units being served, or a reduction in the number of low-income Units at any level of AMGI, as approved by the Board ~~represented at the time of Application~~, evidence must be presented to the Department that includes written confirmation from the lender and syndicator 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 the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an 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 24 months from the time that the amendment is approved.

(e) **Housing Tax Credit and Ownership Transfers.** (§2306.6713) A Development Owner may not transfer an allocation of housing tax credits or ownership of a Development supported with an allocation of housing tax credits to any Person other than an Affiliate of the Development Owner 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.

(1) Transfers will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in §~~49~~50.6(d) of this title, the credit cap will not be applied in the following circumstances:

(A) 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

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

Control

Owner

(f) **Sale of Certain Tax Credit Properties.** Consistent with §2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §~~4~~950.9(i) of this title, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. §42(i)(7)), and the Department declines to purchase the Development.

(g) **Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(h) **Cancellations.** The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation ~~or any of the~~ e undertakings and commitments made by the Development Owner in the Applications process for the ~~Development~~; e

(2) Any statement or representation made by the Development Owner ~~or made~~ with respect to ~~the Development Owner~~ or the Development is untrue or misleading; as of the date made

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §~~4~~950.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

~~(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.~~ (a) or (b)

(i) **Alternative Dispute Resolution Policy.** In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by 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 anytime 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.

covered by adherence to obligations

This is why you have a new penalty policy.

§4950.18.Compliance Monitoring and Material Noncompliance.

The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in ~~Department Rule §~~Chapter 60 of this title.

§4950.19.Department Records; Application Log; IRS Filings.

(a) **Department Records.** At all times during each calendar year the Department shall maintain a record of the following:

(1) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) The cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) The remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) **Application Log.** (§2306.6702(a)(3) and §2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) The names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) The name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

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

(4) Any Set-Aside category under which the Application is filed;

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

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

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

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

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

(c) **IRS Filings.** The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, a copy of each completed (as to Part I) IRS Form 8609, the original of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or faxed to the Development Owner by the Department. The original of the Carryover Allocation Document will be retained by the Department and IRS Form 8610 Schedule A will be filed by the Department with IRS Form 8610 for the year in which the allocation is

made. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§4950.20.Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.

(a) **Timely Payment of Fees.** All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than 10 business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, commitment or allocation to be terminated.

(b) **Pre-Application Fee.** Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-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, will receive a discount of 10% off the calculated Pre-Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d))For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: $1,000 (payable to TDHCA), $1,500 (payable to Vincent & Elkins, Bond Counsel), and $5,000 (payable to the Texas Bond Review Board).

(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as he managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)) For Tax Exempt Bond developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of $30 per unit and bond application fee of $10,000. Those applications utilizing a local issuer only need to submit the tax credit application fee.

(d) **Refunds of Pre-Application or Application Fees.** (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Pre-Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) **Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §§~~49~~50.9(d)(6), (e)(3), and (f)(~~4~~6) of this title if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the commitment fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) **Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination notice, a non-refundable commitment fee equal to 5% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, ~~2007~~2008, the Development Owner will receive a refund of 50% of the Commitment Fee.

(g) **Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. 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~~beginning month of the compliance period~~.

(h) **Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in §~~49~~50.12 of this title, 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 five percent of the amount of the credit increase for one year.

(j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Department uses the guidelines promulgated by The Texas Building and Procurement Commission to determine the cost of copying, and other costs of production.

(k) **Periodic 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 program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. 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.

(l) **Extension and Amendment Requests.** All extension requests relating to the Commitment Notice, Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements and amendment requests shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than 6 months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. The

extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609. Amendment requests must be submitted consistent with §~~49~~50.17(d) of this title. The Board may waive related fees for good cause.

(m) **Penalties.** 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 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within 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 §42, Internal Revenue Code.

§~~49~~50.21.Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§~~49~~50.22.Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) Section 1.13 of this title may be waived for any person seeking any action by filing a request with the Board.

(c) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§4950.23.Deadlines for Allocation of Housing Tax Credits. (§2306.6724)

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (§2306.67022)(§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for housing tax credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than September 30. Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:45 PM
To: Audrey Martin
Subject: FW: QAP Part 2

qap2.pdf (3 MB)

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Thursday, October 11, 2007 7:35 AM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: QAP Part 2

-----Original Message-----
From: Bast, Cynthia L. [mailto:cbast@lockelord.com]
Sent: Wednesday, October 10, 2007 8:51 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: FW: QAP Part 2

<<qap2.pdf>>

-----Original Message-----
From: Bast, Cynthia L.
Sent: Wednesday, October 10, 2007 5:05 PM
To: 'Michael.gerber@tdhca.state.tx.us'
Subject: QAP Part 2

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Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:46 PM
To: Audrey Martin
Subject: FW: QAP Final part

qap4.pdf (2 MB)

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Thursday, October 11, 2007 7:35 AM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: QAP Final part

-----Original Message-----
From: Bast, Cynthia L. [mailto:cbast@lockelord.com]
Sent: Wednesday, October 10, 2007 8:52 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: FW: QAP Final part

<<qap4.pdf>>

-----Original Message-----
From: Bast, Cynthia L.
Sent: Wednesday, October 10, 2007 5:08 PM
To: 'Michael.gerber@tdhca.state.tx.us'
Subject: QAP Final part

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MARK-DANA CORPORATION
19 Silverstrand Place
The Woodlands, Texas 77381
(281) 363-4210
(281) 419-1991 Fax
koogtx@aol.com
dkoogler@houston.rr.com

October 10, 2007

Mr. Michael Gerber (Via Email: 2008rulecomments@tdhca.state.tx.us)
Executive Director
Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: Comments to 2008 Draft Qualified Allocation Plan ("Draft QAP")

Dear Mr. Gerber,

We have developed, built and managed affordable housing (new construction and acquisition/rehabilitation) using Federal tax credits in Virginia since the inception of the Low Income Housing Tax Credit program. We also own a 232 unit apartment complex (market rate units) in Pasadena, Texas, that we purchased from HUD and rehabilitated. We submitted a 9% pre-application in the 2007 tax credit round for a family project in Region 6 but did not pursue it further because the Counsel would not support affordable housing in the Census tract that we selected (they wanted to preserve the area for "high end development"). We are currently working on a 9% tax credit project in Region 6 for the 2008 tax credit round. Our focus is on rehabilitation projects (although we would develop new construction under the right circumstances). We believe that there is a great need for Rehabilitation and Reconstruction that improves the quality and affordability of existing multi-family apartments and that TDHCA policy should encourage the use of Housing Tax Credits for Rehabilitation and Reconstruction projects.

We have reviewed the Draft QAP and, as members of the Texas Association of Affordable Housing Providers ("TAAHP"), we have reviewed the TAAHP Consensus Comments to the Draft QAP. We strongly agree with, and support, the TAAHP Draft QAP Consensus Comments. In addition, we would like to highlight the following comments.

§50.3. Definitions
"Adaptive Reuse" definition – Same comment as TAAHP.

§50.6 (d) *Credit Amount*
The Department will limit the allocation of tax credits to no more than $1.2 million per Development….Tax-Exempt Bond Development Applications are not subject to these Housing

Tax Credit limitations, and Tax-Exempt Bond Developments will not count towards the total limit on tax credits per Applicant.

We understand that the $1.2 million per deal cap was established to ensure that 9% tax credits are spread among the most deals as fairly as possible. This cap does not distinguish between the limited 9% credits and the 4% credits for which a property may qualify. To encourage rehabilitation/reconstruction activities, we request that the $1.2 million cap only apply to the 9% credits for which an application would be eligible.

§50.6(e)(2). Limitations on the Size of Developments. We agree with TAAHP's comments. In addition, we request that Rural Developments involving Reconstruction not have a size limitation (similar to the way Rehabilitation projects are treated). The number of existing units usually affects the price of the property being acquired even if the property must be reconstructed rather than rehabilitated.

§50.9(c). Adherence to Obligations. We agree with TAAHP's comments.

§50.9(h)(4)(A)(ii)Threshold Amenities. W agree with TAAHP's comments regarding::

(IX) Furnished Fitness center

(XXV) Green Building.

§50.9(h)(4)(B),Threshold Amenities. We agree with TAAHP's comment regarding Disposals..

§50.9(h)(7)(A)(iv)(III), Readiness to Proceed/Site Control
We agree with TAAHP's comments.

§50.9(i)(2)(A)(vi) Quantifiable Community Support/Certification that Neighborhood Organization was not formed by Applicant/Developer. We request the deletion of the following sentence (which has been added to an already burdensome requirement): *"Applicants may not request Neighborhood Organizations to change their boundaries to include the Development Site."*

We do not understand why it is harmful for an applicant to ask to be included in a neighborhood's boundaries. The inclusion of a development into an existing neighborhood organization promotes interaction, cooperation, and dialogue -- all things that should be encouraged.

§50.9(i)(5)(A)(iv) – Selection Criteria/ The Commitment of Development Funding by Local Political Subdivisions. We agree with TAAHP's comments regarding the proposed increase of the minimum term of a loan from a Local Political Subdivision from 1 to 5 years.

Having said that, we request that you remove this requirement all together, if possible. If a project is financially feasible without Local Political Subdivision financial support, why impose this additional requirement? There are areas that need affordable housing but do not have the ability to provide this type of support. We have been discussing potential projects with various Community Development organizations and Political Subdivisions. One County in Region 6 has already informed us that they need affordable housing and support it but have no financial resources to provide because they have over-extended themselves in connection with building

community development centers throughout the County. Another City informed us that they are happy to have affordable housing in their community so long as we can obtain the needed financial support on our own without the City's help in the way of letters of support or financial support. This City supported an affordable housing project several years ago and the City and members of City Council were heavily criticized by vociferous objecting constituents and the City does not want to subject itself to criticism that they are taking sides. If a project is fiscally viable and needed, without Political Sub-division, support, the project should be allowed to proceed. The requirement for such financial support also gives those who want it the opportunity for "Nimbyism".

§50.9(i)(10) – Selection Criteria: Declared Disaster Areas
We agree with TAAHP's comments.

§50.9(i)(11) – Selection Criteria: Rehabilitation (which includes Reconstruction) or Adaptive Reuse.
Adaptive Reuse was added to the heading but not to the text. Also we ask that New Construction be permitted with respect to Adaptive Reuse.

§50.9(i)(13) – Selection Criteria: Development includes the Use of Existing Housing as part of a Community Revitalization Plan (Development Characteristics)
We ask that Adaptive Reuse be added to this category and be treated similar to Rehabilitation.

§50.9(i)(15)(C) – Selection Criteria: Economic Development Initiatives. We agree with TAAHP's comments. In addition, how will the area for this item be defined?

§50.9(i)(22) (B) – Selection Criteria: Negative Site Features.
We agree with TAAHP's comments. In addition, we request that distances be measured from the closest Development residential building. Otherwise, Developments on large sites will be penalized even though the residential buildings may be further from the negative feature than a Development on a small site that has boundaries more than 300 feet from the negative feature.

§50.17(c) Challenges to Applications.
We also support the imposition of a deadline for the submission of challenges.

We appreciate the opportunity to provide comments to the Draft QAP and hope that you will consider and make the changes that we and TAAHP have outlined. If you have any questions about our comments, please let us know.

Sincerely,

David M. Koogler
President

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 1:02 PM
To: Audrey Martin
Subject: FW: 2008 QAP Comments
Importance: High

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 1:54 PM
To: 'Robbye Meyer'
Cc: Brooke Boston
Subject: FW: 2008 QAP Comments
Importance: High

New comments

-----Original Message-----
From: David Koogler [mailto:dkoogler@comcast.net]
Sent: Wednesday, October 10, 2007 12:07 PM
To: 2008rulecomments@tdhca.state.tx.us
Cc: koogtx@aol.com
Subject: 2008 QAP Comments
Importance: High

Attached are our comments to the Draft 2008 QAP.

If you have any questions or have trouble opening the attachment, please let us know.

Thank you for this opportunity to provide comments.

Sincerely,
David

David Mark Koogler
Mark-Dana Corporation
19 Silverstrand Place
The Woodlands, TX 77381
(713) 906-4460
(281) 419-1991 Fax
dkoogler@comcast.net (Note New Email Address)

JACKIE L. MARTIN ARCHITECT
MICHAEL T. RILEY ARCHITECT
PATRICK L. FLY, JR. ARCHITECT
JOHN R. O'CONNELL ARCHITECT
ALAN SALZMAN 1928 – 1989

August 7, 2007

Hollis Fitch
Landmark Asset Services
406 East Fourth Street
Winston-Salem, NC 27101-4153

RE: Texas QAP

Mr. Fitch,

As we have discussed, following are our thoughts about clarifying the Texas QAP to better address adaptive reuse developments from an architect's perspective.

I think the first step is to recognize that adaptive reuse is distinct from new construction or rehabilitation by giving it a definition in Section 49.3. Adaptive reuse currently includes portions of the QAP for new construction and rehab so addressing the differences will clear up any confusion.

I believe the only other section that needs to be clarified is in section 49.9(h) Threshold Criteria, sub section (5) Design Items. This section lists the plans and elevations required for the application and is geared toward repetitive floor plans, which is the norm in multi-family housing. However adaptive reuse is seldom repetitive due to the existing conditions found in buildings that were not originally designed for housing. In addition, when historic tax credits are involved the restrictions on what can be modified must be considered. Typically in adaptive reuse each unit plan is different from all others either in size, window placement, door placement, etc. This difference is what makes the developments so interesting but creates a burden on the architect to meet the requirements of 49.9(h)(5)(A)(iii) unit floor plans. Perhaps allowing a broader definition of "each type of unit" would be acceptable. If the paragraph could contain an additional sentence for adaptive reuse to require "unit floor plans for each distinct type of unit (1 Bedroom, 1 Bath; Two Bedroom, One Bath; Two Bedroom, Two Bath; etc.) and for all units that vary in area by 10% (or 50 sf, etc.) from the typical unit." In the subsection (ii) the floor plans and elevations could be clarified for adaptive reuse by requiring "building plans delineating each unit by number, type, and area consistent with those in the Rent Schedule and provide photos of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition." Since the elevations on historic buildings may receive only minor modifications the photos are actually better than a redrawn elevation.

MARTIN RILEY ASSOCIATES - ARCHITECTS, P.C.
215 CHURCH STREET SUITE 200 DECATUR, GEORGIA 30030-3329 404-373-2800 FAX 404-373-2888

In summary, recognizing and clarifying the distinctions between new construction, rehabilitation, and adaptive reuse will help us prepare the drawings necessary for a full understanding of the project without being onerous.

Respectfully Submitted,

Jackie L. Martin
President
Martin Riley Associates - Architects, P.C.

JLM/vzs

W:\Landmark\hollis fitch ltr 8-7-07 re tx qap.doc

Audrey Martin

From: Hollis Fitch [hollis@landmarkdevelopment.biz]
Sent: Tuesday, August 07, 2007 12:57 PM
To: Audrey Martin
Subject: FW: Texas QAP

Texas qap ltr.pdf
(711 KB)

Audrey,

Please find attached the comments for Jackie Martin concerning the items we would like to see addressed.

Hollis Fitch

-----Original Message-----
From: "Jackie Martin" <JMartin@martinriley.com>
To: "Hollis Fitch" <hollis@las-rehab.com>; "charlie@landmarkdevelopment.biz" <charlie@landmarkdevelopment.biz>; "Paul Fitch" <sec42@mindspring.com>
Sent: 8/7/2007 11:32 AM
Subject: Texas QAP

Attached is a letter with my two cents worth of input on the changes to the QAP.

Jackie L. Martin
President
Martin Riley Associates -Architects, PC
404-373-2800

Attached are comments on the 2008 QAP.

Joe Saenz
Executive Director
McAllen Housing Authority

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

Section 50.3(55)(c) (page 7 of 84) needs to be revised to allow at least one unit with more than 2 bedrooms if occupied by the property manager or a maintenance employee.

Section 50.3(62) (page 8 of 84) needs to show that a neighborhood organization includes a Residents Council.

The definition of "Rehabilitation" in Section 50.3(80) (page 10 of 84) was broadened to include **reconstruction** of demolished units on the same site. The definition needs to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features such as environmental issues or location in a flood plain, conditions in the area surrounding the project adversely affect the health or safety of the residents or other factors make the site unsuitable for housing or the feasible operation of the project, or another location is in the best interest of the residents (e.g., closer to amenities or lower density by a larger site), or for other reasons acceptable to the Department. In addition, reconstruction of a larger number of units than previously existed should be allowed if the site's size allows for additional units and the additional units are restricted for occupancy by renters with incomes at or below 50% of median income.

Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area where the proposed project is located. A similar provision should be made for nonprofit participation regarding their bylaws and articles of incorporation not allowing such participation.

Section 50.6(d) Credit Amount (page 17 of 84), unfairly proposes to impose the $2 million limitation to a Housing Authority and nonprofit entities based on individual board members and executive directors participation in other applications. It is unfair to count the amount of a volunteer board member of a housing authority or a nonprofit entity who may also be a developer in their private business that is unrelated to the housing authority or nonprofit entity or vice verse. It is also unfair to count the amount of an application by an unrelated entity simply because an executive director may serve as a board member of the unrelated entity. This section needs to be revised so that an application(s) by unrelated entities or applicants do not count for the $2 million limitation. Similarly, the $2 million limitation should not apply a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to Qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Section 50.7(b)(3) (page 20 of 84) correctly deducts the 15% set aside for at-risks projects from the state ceiling prior to the application of the regional formula.

Section 50.9(c), Adherence to Obligations (page 25 of 84), should be revised as follows *(red Language denotes suggested changes):*

2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
(b) For the second violation, a fine of $50,000, payable to the Housing Trust Fund;
(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

50.9(h)(i)(7)(A)(v) – page 38 of 84 – unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time and not able to document the costs of owning, holding or improving the property. It is unfair to not allow for the

appreciated value of the property. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago.

Section 50.9(h)(8)(B) on Page 42 of 84 requires installation of a sign on the property prior to the submission of an application, and requires the sign to state the date, time and location of the public hearing. This will not be known when the sign is installed. The QAP need to be revised to delete this provision or for meeting date to be posted after TDHCA posts the meeting dates.

Section 50.9(h)(9) (page 43 of 84) should require that if the development's proposed ownership includes participation by a governmental entity or an instrumentality or affiliate of a governmental entity as the Applicant, Development Owner, Developer, or source of commitment for development funding must provide evidence that they are legally authorized to operate in the area where the proposed project is located. If there is nonprofit participation, evidence should be provided that their bylaws or articles of incorporation show they are authorized to so participate. An example is a county housing authority applying in a municipality where it does not have a cooperation agreement or a local finance agency participating outside their area of jurisdiction based on state law.

Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

Section 50.9((i)(5)A(v), (page 52 of 84) limits credits for in-kind contributions for the period between the award or August 1, 2008 and the placed in service date. Does this mean that if an entity contributes the leasehold value of land it will be limited to less than full value (e.g., only to place in service date)? If so, this is a very unfair provision that needs to be deleted. A contribution of land on a lease value should be allowed full value for at least the initial compliance period.

Section 50.9(i)(6), support by State Senator or Representative (page 53 of 84), shows opposition letters are -14 points. The AP needs to show that if 2 opposition letters are received, the total deduction cannot exceed -14 points.

Section 50.9(i)(17), development in non-uran area (page 57 of 84). There is no justifiable basis for awarding 6 points simply because a development is in a locality with less than 100,000 in population. This provision should be deleted from the QAP or lowered to 3 points.

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:49 PM
To: Audrey Martin
Subject: FW: 2008 QAP

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Thursday, October 11, 2007 7:21 AM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: 2008 QAP

-----Original Message-----
From: Joe Saenz [mailto:jasaenz@mcaha.org]
Sent: Wednesday, October 10, 2007 5:45 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 QAP

Attached are comments on the 2008 QAP.

Joe Saenz
Executive Director
McAllen Housing Authority

2008 DRAFT QAP COMMENTS

TAAHP COMMENTS.

§50.3 Definitions. The addition of "Adaptive Reuse" as a category under rehabilitation requires adding a definition. TAAHP's suggestion: *Adaptive Reuse – The reconstruction or rehabilitation of an existing nonresidential development (e.g., a school, warehouse, hospital, etc.) into a residential development.*

We agree with TAAHP.

§50.6(e)(2) Limitations on the Size of Developments. TAAHP requests that Rural Bond transactions be allowed to exceed the 80 unit new construction limit as they have in previous years. We believe that market demand should determine the number of units, not an arbitrary number.

We agree with TAAHP.

§50.9(c) Adherence to Obligations. TAAHP believes strongly that developers should abide by the rules and regulations and should develop buildings as agreed upon; however, TAAHP believes that the penalties should be commensurate with the "crime." TAAHP provided testimony on this issue at the September 13th board meeting and looks forward to working with TDHCA to find an effective solution to the problem.

We agree with TAAHP.

§50.9(h)(4)(A)(ii) Threshold: Amenities. TAAHP requests the following clarifications:
(X) Furnished Fitness center equipped with ***1 piece of equipment per 40 apartment units (but not less than 2)*** of the following fitness equipment options...

TAAHP believes the minimum of 5 pieces of equipment required as part of the 2008 QAP is not justifiable for smaller properties.

(XXVI) Green Building. TAAHP requests clarification on which of these amenities must be provided in order to qualify for 3 points and suggests that there should be a test of monetary equivalency. For instance, the provision of recycling bins should not garner the same number of points as the installation of passive solar/heating cooling equipment.

We agree with TAAHP on both.

§50.9(h)(4)(B) Threshold: Amenities. TAAHP requests the following clarification:
(iii) Disposals do not have Energy Star ratings, and we request clarification within this category.

We agree with TAAHP.

§50.9(h)(7)(A)(iv)(III) Readiness to Proceed/Site Control. This reads: "In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) plus costs identified in subparagraph (b), or the "as is" value conclusion evidenced by subclause (II)(a). TAAHP suggests that the following phrase be added to this paragraph: "unless the land bas been owned by the applicant for at least 5 years in which case the appraisal will be used."

This will ensure that properties not be "flipped" but allow a test of reason for entities which have owned land for a reasonable period of time, reducing the burden of having to produce years of invoices and financial statements justifying improvements.

We agree with TAAHP.

§50.9(i)(2)(A)(iv) Quantifiable Community Support/Certification that Neighborhood Organization was not formed by Applicant/Developer. This year, TDHCA has inserted the following additional sentence to already burdensome requirements: *"Applicants may not request Neighborhood Organizations to change their boundaries to include the Development Site."* TAAHP requests that the last sentence of this paragraph be eliminated.

TAAHP fails to see why it is wrong for an applicant to ask to be included in a neighborhood's boundaries.

We STRONGLY agree with TAAHP.

What would stop a Neighborhood Organization from changing its boundaries to remove Development Site from its boundaries?

§50.9(i)(5)(A)(iv) Selection Criteria: The Commitment of Development Funding by Local Political Subdivisions. This year staff has increased the minimum term of the loan from a Local Political Subdivision from 1 to 5 years. TAAHP requests the reversion to the 2007 QAP – or alternatively, make the minimum term 1 year or placed in service date, whichever is later. Our reason for this is that local governments cannot make mid- and long-term loans in today's economic climate. Cities agreeing to loan HOME funds or similar low-interest loans need to be able to get the funds paid back in a reasonable period of time so that they can "recycle" them. Additionally, a five year loan has no appropriate role in the tax credit financing arena. It is too long to be short-term debt which is usually a construction or predevelopment loan – and it is not long enough to be permanent financing, which has an 18 year term minimum.

We STRONGLY agree with TAAHP.

§50.9(i)(10) Selection Criteria: Declared Disaster Areas. Clarification is needed on which disaster areas will be eligible. For instance, the Governor declared a statewide disaster area on March 17, 2006 for all 254 counties as a result of fire hazards caused by severe drought. The two-year period would make all counties eligible for these 7 points.

We agree with TAAHP.

§50.9(i)(15)(C) Selection Criteria: Economic Development Initiatives. Although there are points for projects to be located in certain economic development areas, these points are not allowed if there have been three tax credit projects in the area in the last 7 years.

The use of "three tax credit projects" as the barometer does not bear any relation to the size of the community and does not take into consideration the size of the 3 projects. TAAHP requests that the test be the same as that used in Sections 50.6(g) and (h) whereby housing cannot be built in concentrated census tracts; i.e., census tracts exceeding 30%/40% housing tax credit units per household.

> We agree with TAAHP's suggestion; however, we oppose this new scoring criterion. It was taken from Section 50.9(i)(16) Development Location. It will be difficult to score under both criteria.

§50.9(i)(22)(B) Selection Criteria: Negative Site Features. TAAHP requests clarification on the following two new criteria as follows:

(vi) It is difficult to locate "sexually oriented businesses" with standard mapping programs. Further clarification as to the purpose of this section is needed and to the definition of what constitutes a "sexually oriented business."

(vii) "Flight Path" may be too broad a term – "clear zone" is probably the more appropriate verbiage.

> We agree with TAAHP on both.

§50.17(c) Challenges to Applications. TAAHP supports the imposition of a deadline for the submission of challenges.

> We agree with TAAHP.

****

NRP COMMENTS.

§50.3 Definitions. NRP requests clarification of the difference between Rehabilitation and Reconstruction.

§50.6(d)(4) Credit Amount: Development Consultant Fee. Developers are no longer able to receive 20% of the Development Consultant Fee for Qualified Nonprofit Developments. NRP suggests keeping the language from the 2007 QAP.

§50.6(e)(3) Limitations on the Size of Developments. NRP requests clarification on the following language:

(3) Urban Developments involving any New Construction (excluding New Construction of non-residential buildings), will be limited to 252 Total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 Total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation max exceed the maximum Unit restrictions.

Are Tax-Exempt Bond Developments limited to 200 Department administered Units?

(4) For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable units on its site (in a number not to exceed the original units being replaced, unless a market study supports the absorption of additional units) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months or a resolution is submitted with the Application from the local political authority stating there is an additional need and the market study supports the additional units.

Does the maximum Department administered Units apply to the combined total?

What is the definition of sustaining occupancy?

Please clarify what is needed in the resolution and market study in order to justify exceeding the maximum allowable Development size. Does this exception apply to the maximum Departments administered Units as well?

Does this apply to Developments involving Rehabilitation/Reconstruction that exceed the maximum allowable Development Size?

§50.9(h)(7)(B)(i)(I-III) Readiness to Proceed/Site Control: Evidence from Appropriate Local Municipal Authority. For New Construction or Reconstruction Developments within the boundaries of a political subdivision which does not have a zoning ordinance, a letter stating this as well as *(II) ...the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or (III) ...that there is a need for affordable housing if no such planning document exists* is required. If zoning does not exist, how can a letter regarding land use (i.e., Affordable Housing) be required?

§50.9(h)(8)(B) Signage on Property or Alternative. NRP suggests keeping the language from the 2007 QAP - allowing written notifications in accordance with the local zoning notification requirements as an alternative to the installation of a public notification sign. Allowing the alternative actually strengthens the department's goals of ensuring that those **most directly impacted** by the proposed development are notified.

§50.9(i)(3) Selection Criteria: The Income Levels of Tenants of the Development. NRP suggests keeping the language from the 2007 QAP – *(B) 22 points if at least 10% of the Total Units in the Development are set-aside with income at or below 30% AMGI* – instead of the further deep targeting proposed by the new language – *(B) 22 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI.*

§50.9(i)(6) Selection Criteria: The Level of Community Support from State Representative or State Senator. *"If one letter of support is received in support and one letter is received in opposition the score would be 0 points."* Instead of cancelling out, NRP suggests that in this instance the score would be 7 points.

§50.9(i)(8) Selection Criteria: The Cost of the Development by Square Foot. With the rising construction costs, NRP suggests an increase in the cost per square foot for all developments in all areas of the state.

§50.12(b) Applicability of Rules for Tax-Exempt Bond Developments. The following language has been crossed out: "*Consistency with the local municipality's consolidated plan or similar planning document must be demonstrated in those instances where the city or county has a consolidated plan. If no such planning document exists then the Applicant must submit a letter from the local municipal authority stating such and that there is a need for affordable housing.*"

Is this letter no longer required for Tax-Exempt Bond Developments?

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 04, 2007 6:06 PM
To: Audrey Martin
Subject: Fw: Proposed 2008 QAP Comments

2008 DRAFT QAP COMMENTS 100407.

QAP comments
Robbye G. Meyer
Director of Multifamily Finance

----- Original Message -----
From: Debra Guerrero <dguerrero@nrpgroup.com>
To: Robbye Meyer <robbye.meyer@tdhca.state.tx.us>
Cc: Valerie Garrity <vgarrity@nrpgroup.com>; Mike Dunn <mikedunn@txdunn.com>
Sent: Thu Oct 04 16:21:13 2007
Subject: Proposed 2008 QAP Comments

Robbye - Attached are our comments to the proposed 2008 QAP. Mike Dunn will be presenting them at the public meeting this evening, however I know that you like to receive them as a word doc as well. See you soon. Debra

Debra Guerrero
the NRP Group
111 Soledad - Suite 1220
San Antonio, Texas 78205
210.487.7878 office
210.487.7880 facsimile
210.410.7780 cellular
dguerrero@nrpgroup.com
www.nrpgroup.com

QAP (7)

Realtex
Development Corporation

October 4, 2007

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Comments on 2008 Qualified Allocation Plan

Dear Mr. Gerber:

On behalf of Realtex Development Corporation, I want to thank you and your staff for working with the development community to develop the Qualified Allocation Plan for 2008. Because of your efforts, the comments from Realtex Development are minimal in scope.

I am pleased to submit the following comments on the draft of the 2008 QAP:

§50.9(c) Adherence to Obligations. If a Development Owner does not produce the Development as represented in the Application by the Department prior to implementation of such amendment, or does not provide the necessary evidence for any points received by the required deadline; *And such development changes result in a negative impact to the project.*

§50.9(i)(8) Cost of the Development by square foot. The $85 per square foot of net rentable area should not apply to parking structures, including podium or underground parking garages. The $85-per-square-foot limit means that urban areas that require structured parking rather than surface parking to avoid encourage dense pedestrian-friendly design will not be competitive, nor financially feasible in the 9% tax credit application process. *We suggest the following revision, "This calculation does not include indirect construction costs, or structured parking garages (including podium and underground designs) if the costs associated with the structured parking garage are not included in eligible basis."*

§50.9(i)(15) Economic Development Initiatives. Texas law allows municipalities to designate zones that receive economic development incentives and benefits. These zones are known as tax increment reinvestment zones and should be included in the list of areas eligible for economic development points. *We suggest the following revision, "Economic Development Initiatives: A Development that is located in one of the following two areas may qualify to receive four points: (1) a Designated State or Federal Empowerment, Enterprise Zone, Designated Tax Increment Reinvestment Zone pursuant to Chapter 311 of the Texas Tax Code..."*

All other comments to the Draft 2008 QAP have been forwarded to TAAHP and are incorporated into their written responses to TDHCA.

Realtex Development Corporation looks forward to working with TDHCA on a successful 2008 9% round. If you have any questions about our comments, please contact me.

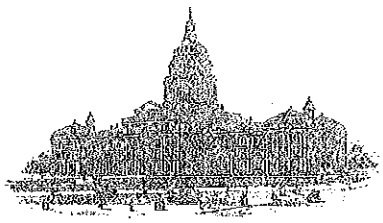
Thank you ,

Rick J. Deyoe
Realtex Development Corporation, President
912 S. Capital of TX Hwy., Suite 200
Austin, TX 78746
512-306-9206 office

TEXAS HOUSE OF REPRESENTATIVES

CAPITOL OFFICE:
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0528
(512) 463-7820 Fax

DISTRICT OFFICE:
1550 Foxlake Dr., Ste 114
Houston, Texas, 77084
(281) 578-8484
Fax (281) 578-1674



BILL CALLEGARI
STATE REPRESENTATIVE

20 September 2007

Mr. Michael Gerber
Texas Department of Housing and Community Affairs
2008 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

Dear Mr. Gerber,

Thank you for providing me with the opportunity to comment on the proposed 2008 qualified allocation plan and rules for the housing tax credit program. I have two suggestions for the proposed rules. Both suggestions are possible solutions to problems that I have encountered with previously proposed tax credit developments in my district.

The current rules limit notice to, and entitle input from only state representatives, senators, and certain county and city officials. The rules do not require that notice be provided to directors of municipal utility districts (MUDs), or that district directors be given meaningful standing when providing input on a proposed development. I think this omission hurts areas that are not located within the corporate boundaries of a municipality, but are located within a MUD.

I think the proposed rules should be amended to include MUD directors among the list of officials eligible to receive notice regarding a proposed project, and to provide weighted input on that project. Like state representatives, senators, mayors, and county commissioners, MUD directors are elected officials. In addition, MUD directors represent smaller constituencies than city, county, and state officials. This allows for them to be more in touch with the needs and interests of the communities. Given this close connection, I believe that they are in an excellent position to provide meaningful input with regard to a proposed housing development. Towards that end, I recommend that you amend the proposed rules to facilitate the notice and involvement of MUD directors.

The second issue relates to those neighborhood organizations eligible to provide meaningful comment on a proposed application. The proposed rules require that only neighborhood organizations whose boundaries include the proposed development be given standing. This requirement excludes those organizations that may be in the

E-Mail: bill.callegari@house.state.tx.us

surrounding areas, or even border the proposed development site. I believe that these neighborhoods would be just as affected by a proposed development as the one in which the project is to be located. To be sure, the placement of a multifamily development may affect the factors controlling the quality of life for communities located miles from the site.

I recommend that the proposed rules be amended to allow neighborhood organizations located at least two to three miles from the proposed development site standing when providing measurable community input. I believe that this change would give other potentially affected communities a needed opportunity to provide input on a proposed development.

Thank you for providing me with the opportunity to provide input on the proposed rules. I would welcome the opportunity to discuss my suggestions with you in further detail.

Sincerely,

W.A. Callegari

TEXAS HOUSE OF REPRESENTATIVES

EDDIE RODRIGUEZ FIFTY-FIRST DISTRICT

October 10, 2007

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Comment on 2008 Qualified Allocation Plan

Dear Mr. Gerber:

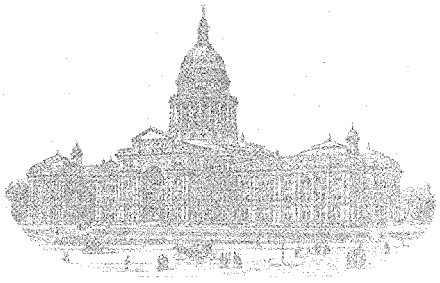
The Robert Mueller Municipal Airport ("Mueller") is the 711-acre site of the old Austin airport that closed in 1999 when the Bergstrom International Airport opened. Austin stakeholders and public officials announced a plan for compact neighborhoods at Mueller, promoting a pedestrian-friendly, mixed-use and mixed-income community.

As the Master Developer of Mueller selected by the City of Austin (City), Catellus Development Group (Catellus) strongly supports affordable housing at Mueller. In fact, at least twenty-five (25%) percent of the homes will be sold/leased to families at affordable incomes. Consistent with the tax credit program, an affordable resident for the rental housing can earn no more than sixty percent (60%) or less of the median family income for Austin. Catellus is currently planning a senior rental affordable housing site to be built at Mueller and will identify an affordable housing site for families in the near future.

Mueller is already an award-winning community and will be the first of its kind in the heart of Austin utilizing compact, traditional neighborhood design elements. Mueller is near downtown Austin and only two miles from the Capitol and the University of Texas. When completed, the Mueller site will be an urban village that will be home to 10,000 residents, including approximately 1,200 affordable homes, and will also offer approximately 10,000 jobs.

The design concepts for Mueller include mixed-use, pedestrian orientation, mass transit focus, green building, mixed-income and architectural quality. These concepts provide a community ideally suited for sustained success for the affordable homes.

POST OFFICE BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0674



COMMITTEES:
PENSIONS & INVESTMENTS
GOVERNMENT REFORM
REDISTRICTING

The compact mixed-use neighborhood will allow residents to walk to work, parks and retail. The pedestrian and transit aspects reduce dependency on automobiles and the costs associated with them, including rising gas prices. All of the homes will be built to Austin Energy Green Building standards resulting in lower monthly energy bills. The mixed-income community will support residents from diverse backgrounds and create neighborhoods that generate a sense of pride and inclusion. Mueller's Design Guidelines encourage beautiful architecture in line with New Urbanism design standards. These design concepts make Mueller an ideal community for long-term success of a 9% tax credit property.

We look forward to working with the Texas Department of Housing and Community Affairs to make our plans for the affordable housing at Mueller a reality. You can learn more about Mueller at www.MuellerAustin.com.

Unfortunately, Mueller does not appear to score well in the 2008 Qualified Allocation Plan (QAP) draft that is currently open to public comment. We encourage TDHCA to make the following revisions to the QAP to make Mueller's location and design concept a competitive application for 9% tax credits:

Definitions [50.3]

Please include the following definition:

"Adaptive Reuse – The transformation of an existing nonresidential development (e.g. school, warehouse, airport) into a residential development."

Cost of the Development by Square Foot [50.9(i)(8)]

The $85 per square foot of net rentable area should not apply to parking structures, including podium or underground parking garages. A surface parking space costs approximately $500 per parking space, but a structured parking garage costs $12,000 per space and an underground parking garage costs $20,000 per space. The $85-per-square-foot limit means that urban areas that require structured parking rather than surface parking to avoid sprawl and encourage dense pedestrian-friendly design will not be competitive in the 9% tax credit application process.

We suggest the following revision, "This calculation does not include indirect construction costs, or structured parking garages (including podium and underground designs) if the costs associated with the structured parking garage are not included in eligible basis."

Rehabilitation (which includes Reconstruction) or Adaptive Reuse [50.9(i)(11)]

We suggest the following clarification of this provision, "Rehabilitation (which includes Reconstruction) or Adaptive Reuse. Applications may qualify to receive 6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), or solely Reconstruction (excluding New Construction of non-residential buildings) or solely Adaptive Reuse qualify for points."

Development Includes the Use of Existing Housing as Part of a Community Revitalization Plan [50.9(i)(13)]

This point item is designed to encourage developers to rebuild areas that are part of an official Community Revitalization Plan. Adaptive Reuse can accomplish this goal as effectively as rebuilding existing housing and should also qualify for these points.

We suggest the following revision, "Development Includes the Use of Existing Housing or Adaptive Reuse as part of a Community Revitalization Plan. The Development is an Existing Residential Development or Adaptive Reuse and proposes Rehabilitation, Reconstruction, or Adaptive Reuse as part of a Community Revitalization Plan."

Economic Development Initiatives [50.9(i)(15)]

Texas law allows municipalities to designate zones that receive economic development incentives and benefits. These zones are known as tax increment reinvestment zones and should be included in the list of areas eligible for economic development points.

We suggest the following revision, "Economic Development Initiatives: A Development that is located in one of the following two areas may qualify to receive four points: (1) a Designated State or Federal Empowerment, Enterprise Zone, Designated Tax Increment Reinvestment Zone pursuant to Chapter 311 of the Texas Tax Code..."

Site Characteristics [50.9(i)(22)]

In the 2008 draft QAP, proposed new language this year includes deducting site characteristics points for, "Developments where the buildings are located within the accident zone or flight paths for commercial or military airports." Mueller is approximately 10 miles from Bergstrom International Airport, and the noise from any airplanes that may fly overhead is negligible. TDHCA should delete this language from the QAP because flight path maps are not available to the public. If a site is located in a flight path but far from an active airport, the site presents no risk of accident or excessive noise. TDHCA environmental study rules already require noise studies if a site is located near an airport, and a noise study is more appropriate than deducting points for sites located in flight paths that are distant from an airport.

If you have questions about our comments, please contact me at your earliest convenience. We look forward to working with TDHCA as a partner in the historic effort to make Mueller a model mixed-income, mixed-use community.

Sincerely,

E Rodriguez

Eddie Rodriguez
District 51

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:54 PM
To: Audrey Martin
Subject: FW: Office of State Representative Eddie Rodriguez

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 5:21 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: Office of State Representative Eddie Rodriguez

-----Original Message-----
From: Carlos Calle [mailto:Carlos.Calle@house.state.tx.us]
Sent: Wednesday, October 10, 2007 4:57 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: Office of State Representative Eddie Rodriguez

Please see attached letter

Carlos Calle
Legislative Aide
Office of State Representative Eddie Rodriguez
Capitol Office P.O. Box 2910
Austin, TX 78768

Phone: (512) 463-0674
Fax: (512) 463- 5896

http://www.house.state.tx.us/members/dist51/rodriguez.htm

Rural Rental Housing Association of Texas
11615 Angus Road, Suite 104Q
Austin, Texas 78759
512-619-1099 Fax: 512-345-9968
jeffcrozier@austin.rr.com

32

DATE: October 10, 2007

TO: Texas Department of Housing & Community Affairs

FROM: Jeff Crozier

FAX NUMBER: 475-3978

NUMBER OF PAGES INCLUDING COVER: 6

MESSAGE: Here are the RRHA comments on the QAP and other programs

Jeff

RRHA OF TEXAS

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

October 10, 2007

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments on 2008 Qualified Allocation Plan, the 2008 Housing Tax Credit Amendment Process Policy and the Asset Resolution and Contract Resolution Enforcement Amendments

Dear Mike:

I would like to make the following comments on behalf of the Rural Rental Housing Association of Texas. I have conferred with many of my members and the same issues kept being raised. Many of these you are probably aware of but we wanted to put it in our comments so that it will be on record.

1. We would like Section 50.7 (b)(2) clarified with respect the whether the USDA 538 loan can be used in conjunction with the USDA 515 loan for a rehabilitation project and still be included in the 5% TXRD set-aside. The confusion comes with the legislation that passed in the last legislative session that stated that the 538 loan cannot be used in whole or in part as a financing vehicle and still be in the TXRD set-aside. You have seen comments from Representative Jose Menendez who has stated that this was never the intent of the legislation but it was an unintended consequence of the language in the bill. In the draft QAP it states that if the 515 financing is retained, then that property qualifies for the USDA set-aside no matter where any other additional funding is provided. It was our determination that the 538 used in conjunction with a new construction loan cannot be used in the USDA set-aside but it was never the intent of anyone to not allow rehab properties use the 538 funds. That is what this program was created for at USDA, to help provide funds for the rehab of old 515 properties.

2. We believe that the 2008 QAP-draft language that limits rural developments to 80 units is appropriate when applied to the 9-percent tax credit program, however, RRHA also believes that housing markets in some rural communities demand greater amounts of affordable housing, and they should be allowed to meet this need through housing bonds that are not limited to 80-unit developments.

   Everyone realizes that the rule was intended to stop large apartment developments going into small rural communities. There is a quirk in the system however that there are some rural communities on the outskirts of MSA's where larger developments would be warranted. Categorically, we would like to see the restriction on the size of rural bond projects lifted altogether, but as a compromise we would go for saying that there is a mileage limitation from the boundaries of an MSA. For instance, IF the market study

417-C West Central • Temple, Texas 76501 • (254) 778-6111 • FAX (254) 778-6110
E-Mail: office@rrhatx.com

determines there is a need for a larger development, then maybe there should not be a limit on rural properties that are located within 30 or 50 miles from the boundary of an MSA. The only way a bond deal will work in rural Texas is that it will have to be near an MSA so this mileage limitation may give the developers who use the bond program the leeway to get a project developed. If the development community is going to take advantage of the recently passed legislation that permits multiple bond deals in rural communities, this may be the way to make that happen.

3. ***§50.9(i)(5)(A)(iv) – Selection Criteria/ The Commitment of Development Funding by Local Political Subdivisions.*** This year staff has increased the minimum term of the loan from a Local Political Subdivision from 1 to 5 years. RRHA requests the reversion to the 2007 QAP – or alternatively make the minimum term 1 year or placed in service date, whichever is later. Our reason for this is that local governments cannot make mid- and long-term loans in today's economic climate. Cities agreeing to loan HOME funds or similar low-interest loans need to be able to get the funds paid back in a reasonable period of time so that they can "recycle" them. Additionally, a five year loan has no appropriate role in the tax credit financing arena. It is too long to be short-term debt which is usually a construction or predevelopment loan – and it is not long enough to be permanent financing, which has an 18 year term minimum.

   We would also like propose that under this same section that the USDA 538 loan funds be used to claim the points under this criterion for both new construction and rehabilitation developments. As stated earlier, this program was designed by USDA to provide additional funds to 515 developers to rehab their existing properties and the USDA certainly wants these funds expended each year and this could help with that process. If this is not possible for new construction, and considering how the determination goes on point #1 above, then this may be an alternative that would give rehab developments using the 538 loan, the ability to compete in the "Rural set-aside" against the "New Construction" applications.

4. Under Section 50.20(h), Inspection Fees, we would like the language returned to the 2006 format where it stated:

   The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development. Developments receiving financing through TX-USDA-RHS that will not have construction inspections performed through the Department will be exempt from the payment of an inspection fee.

These are the four areas that RRHA truly has an interest in seeing clarified and/or changed but there are other issues in the QAP that other housing groups have proposed and we certainly want to support those issues as well. Some of those are outlined below.

1. ***§50.3. Definitions***
The addition of "Adaptive Reuse" as a category under rehabilitation requires adding a definition. A suggestion would be: *Adaptive Reuse – The reconstruction or rehabilitation of an existing nonresidential development (e.g., a school, warehouse, hospital, etc.) into a residential development.*

Also, with respect to the rural definition, specifically 50.3 (83)(C), it states:

(C) In an Area that is eligible for ~~New Construction~~ funding by Texas Rural Development Office or the United States Department of Agriculture (~~TX~~TRDO-USDA-~~RHS~~), other than an area that is located in a municipality with a population of more than 50,000; ~~or~~

We would like to make sure that an unintended consequence of this rule is that it does not eliminate from the definition of Rural Area, existing TRDO-USDA 515's that are eligible for rehab and TRDO-USDA funding in Municipalities of 50,000 or more.

A substantial percentage of the existing TRDO-USDA properties are within the subject 50,000 population definition. With the difficulties already existing with 538 funding and other exclusions that surface, it may put properties with these profiles outside the RD set aside.

2. ***§50.9(c). Adherence to Obligations.*** RRHA believes strongly that developers should abide by the rules and regulations and should develop buildings as agreed upon; however, we believe that the penalties should be commensurate with the "crime". This will be further discussed at the end of our comments.

3. ***§50.9(h)(4)(A)(ii)Threshold Amenities.*** TAAHP requests the following clarifications:

(X) Furnished Fitness center equipped with ***1 piece of equipment per 40 apartment units (but not less than 2)*** of the following fitness equipment options . . .

We believe that the minimum of 5 pieces of equipment required as part of the 2008 QAP is not justifiable for smaller properties.

(XXVI) Green Building. Please clarify on which of these amenities must be provided in order to qualify for 3 points and suggests that there should be a test of monetary equivalency. For instance, the provision of recycling bins should not garner the same number of points as the installation of passive solar/heating cooling equipment.

4. ***§50.9(h)(4)(B),Threshold Amenities.*** We request the following clarification:

(iii). Disposals do not have Energy Star ratings and we request clarification within this category.

5. ***§50.9(h)(7)(A)(iv)(III), Readiness to Proceed/Site Control***

This reads: "In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) plus costs identified in subparagraph (b), or the "as-is" value conclusion evidenced by subclause (II)(a). We suggest that the following phrase be added to this paragraph: "unless the land has been owned by the applicant for at least 5 years in which case the appraisal will be used."

This will ensure that properties not be "flipped" but allow a test of reason for entities which have owned land for a reasonable period of time, reducing the burden of having to produce years of invoices and financial statements justifying improvements.

6. ***§50.9(i)(2)(A)(vi) Quantifiable Community Support/Certification that Neighborhood Organization was not formed by Applicant/Developer.*** This year, TDHCA has inserted the following additional sentence to already burdensome requirements: *"Applicants may not request Neighborhood Organizations to change their boundaries to include the Development Site."* RRHA requests that the last sentence of this paragraph be eliminated.

RRHA fails to see why it is wrong for an applicant to ask to be included in a neighborhood's boundaries.

7. ***§50.9(i)(10) – Selection: Declared Disaster Areas***
Clarification is needed on which disaster areas will be eligible. For instance, The Governor declared a statewide disaster area on March 17, 2006, for all 254 counties as a result of fire hazards caused by severe drought. The two-year period would make all counties eligible for these 7 points.

8. ***§50.9(i)(15)(3) – Selection Criteria: Economic Development Initiatives.*** Although there are points for projects to be located in certain economic development areas, these points are not allowed if there have been three tax credit projects in the area in the last 7 years.

The use of "three tax credit projects" as the barometer does not bear any relation to the size the community and does not take into consideration the size of the 3 projects. One possible option would be that the test be the same as that used in Sections 50.6(g) and (h) whereby housing cannot be built in concentrated census tracts; i.e., census tracts exceeding 30%/40% housing tax credit units per household.

9. ***§50.9(i)(22) (B) – Selection Criteria: Negative Site Features.***
RRHA requests clarification on the following two new criteria, as follows:

(vi) It is difficult to locate "sexually oriented businesses" with standard mapping programs. Further clarification as to the purpose of this section is needed and to the definition of what constitutes a "sexually oriented business.".

(vii) "Flight path" may be too broad a term – "clear zone" is probably the more appropriate verbiage.

10. §50.17(c) Challenges to Applications.
We support the imposition of a deadline for the submission of challenges.

The Housing Tax Credit Amendment Process Policy

As stated earlier the punishment needs to fit the crime. RRHA believes that developers should live up to obligations made in their applications and for those developers that blatantly ignore those rules should receive some kind of punishment but there are a lot of items where boxes are checked and blank lines completed that at the end of the day what was checked on the application just cannot be provided. This rule leaves it open that if someone makes an honest mistake, they could be banned from the program for 1-10 years. This is a huge penalty for a mistake and yes, it says they may evoke the penalty but many years down the road this could become another one of those unintended consequences.

RRHA believes that the staff should have maximum flexibility to handle administrative correction and if the issue that is being put in front of the board had no impact on whether or not the application received it's allocation, the approval should not be withheld unless there are some sort of other circumstances involved, but in the spirit of transparency, those circumstances need to be spelled out. An example of this is the 3% reduction in the square footage or common areas. The size of the units or the size of the common area had no effect on an applicaton being chosen. Do we want someone changing the unit mix or dropping common area buildings altogether, of course not, but if there are some changes that were made and they did not effect the selection of the application, then there should be some leeway given.

The Asset Resolution and Contract Enforcement Policy

As mentioned earlier, anytime you start putting year long debarments, please make sure that all options have been thought out and there are no unintended consequences.

Once again, thank you for the opportunity for RRHA to express opinions on this year's rules. Please feel free to call me at my office should you have any questions.

Respectfully,
Rural Rental Housing Association of Texas

Jeffrey L. Crozier
Executive Director

Cc: Jim Fieser
President, RRHA

SAHA
SAN ANTONIO
... for the people

San Antonio Housing Authority
818 S. Flores St. • P.O. Box 1300
San Antonio, TX 78295-1300
Phone (210) 477-6262

www.saha.org

October 10, 2007

Texas Department of Housing and
Community Affairs
2008 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

Re: Draft 2008 Tax Credit QAP

Ladies and Gentlemen:

Enclosed for your consideration are comments on the draft 2008 Housing Tax Credit Program Qualified Allocation Plan (QAP). All page numbers mentioned below refer to the version of the QAP located on the TDHCA web site.

1. The definition of At-Risk Development in 50.3(13) should be revised to include projects developed pursuant to the U.S. Housing Act of 1937, 42 U.S.C.A. 1437. Many of the existing projects are over 60 years old and in need of extensive rehabilitation. The definition should also include projects with project-based Section 8 certificates and/or Vouchers administered by local Housing Authorities. Many of these projects are in declining condition because of the low rents.

2. Section 50.3(55)(C) on page 7 should be revised to allow one or two units with more than two bedrooms if occupied by a manager or maintenance worker.

3. The definition of Neighborhood Organization in Section 50.3(62) on page 8 should be revised to include a Residents Council.

4. The definition of "Rehabilitation" in Section 50.3(80) should be broadened to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features, such as environmental contamination or location in a flood plain. There may also be negative conditions in the area surrounding the original site which make the site unsuitable. A different site for the reconstruction could also result in a lowering of project density, or in residents being closer to desired amenities. In addition, reconstruction of a larger number of units than previously existed on the site should be allowed if the size of the site is suitable for an increased number of units.

5. In the definition of "Related Party" in Section 50.3(81), it should be made clear that tax credits awarded to an individual who voluntarily serves as a housing authority commissioner do not count against any tax credits being sought by an entity related to the housing authority. Section 50.6(d) should be revised so that credits awarded to an individual board member in his/her private capacity do not count against credits awarded to an entity related to the housing authority.

6. The description of funding sources in Section 50.5(a) (8) (D) should also include housing authority capital funds.

7. Section 50.5 should be revised to provide that an application is ineligible if a public agency participating in the project does not have legal authority to operate in the geographic area where the property is located. The first subsection C on page 43 should be revised to require evidence of the public agency's legal authority to operate in the geographic area as part of the application.

8. Why are Notary Public Services deemed more important to tenants than services such as child care, transportation, and legal services? Notary Public Services receive two points and the other listed services receive only one. Subsections ii and iii, Page 55.

9. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago. The acquisition cost should be the current appraised value as established by an independent third-party appraisal. Subsection (III), Page 38

10. Subsection B on Page 42 requires installation of a sign on the property prior to the submission of an application, and requires the sign to state the date, time and location of the public hearing. This will not be known when the sign is installed. The QAP should be revised to delete the provision, or to allow for the meeting date to be added later.

11. Subsection iv on page 48 limits comments by resident councils to "Rehabilitation" or "Reconstruction" on the same site. The QAP should also allow comment (and scoring) by a resident council for new construction if within the boundary of the property in which the council members currently live.

12. The proposed time limit now included for in-kind contributions (Subsection (v), Page 52) is unnecessary. A development cost is a development cost, and full credit should be given for the actual demonstrated value.

13. Is it possible for an application to receive a negative point total for the Level of Community Support from State Representative or State Senator if two opposition letters are received? The QAP should be revised to show that two opposition

letters will not result in a deduction greater than 14 points. Subsection 6, page 53

14. In Subsection 17, Page 57, an application should not receive 6 points simply for being in a city with a population less than 100,000.

We appreciate the opportunity to offer comments on the draft QAP. If you have any questions about the comments, please call me at 210-477-6048.

Very truly yours,

Henry A. Alvarez, III
President and CEO

...for the people

San Antonio Housing Authority
818 S. Flores
San Antonio, TX 78204
Phone 210.477-6006
Fax 210. 477-~~6002~~ 6266
Email: bob_waggoner@saha.org
www.saha.org

FACSIMILE TRANSMITTAL SHEET

To: TDHCA From: BOB WAGGONER

Fax: 512/475-3978 Pages: 4

Phone: Date: 10-10-07

Re: 2008 Draft QAP Original to follow by mail: ☐ yes ☐ no

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ For Your Information

Message: Attached for your consideration are comments on the draft QAP.

SANDERSON CONSULTING

2008 QAP and REA Comments

QAP

1. *§50.3. Definitions*
The addition of "Adaptive Reuse" as a category under rehabilitation requires adding a definition. Suggested language:

Adaptive Reuse – The reconstruction or rehabilitation of an existing nonresidential ***structure*** *(e.g., a school, warehouse, hospital, etc.) into a residential development.*

Also, please clarify whether the original building can increase in size.

2. ***§50.9(i)(2)(A)(vi) Quantifiable Community Support/Certification that Neighborhood Organization was not formed by Applicant/Developer.***
This year, TDHCA has inserted the following additional sentence to already burdensome requirements: *"Applicants may not request Neighborhood Organizations to change their boundaries to include the Development Site."*

The sentence should be stricken. The inclusion of a development into an existing neighborhood organization promotes interaction, cooperation, and dialogue -- all things that should be encouraged.

3. ***§50.9(i)(5)(A)(iv) – Selection Criteria/ The Commitment of Development Funding by Local Political Subdivisions.***
This year staff has increased the minimum term of the loan from a Local Political Subdivision from 1 to 5 years.

Would like to keep the language from 2007 and keep the loan term to a minimum of one year. In addition to the fact that the current economic climate make it hard for local governments to provide mid- and long-term loans, please note that PHAs must get the Attorney General's approval for loans that are longer than a year.

4. ***§50.9(i)(10) – Selection: Declared Disaster Areas***
Clarification is needed on which disaster areas will be eligible. For instance, The Governor declared a statewide disaster area on March 17, 2006, for all 254 counties as a result of fire hazards caused by severe drought. The two-year period would make all counties eligible for these 7 points.

Additionally, entities declare disaster areas in different ways, with some having finite beginning and ending dates. Does the two-year clock begin only at the declaration of the disaster? What if the declaring entity keeps the area open for disaster assistance longer than two years from declaration, thus still considering it to be a disaster area?

5. ***§50.9(i)(15)(3) – Selection Criteria: Economic Development Initiatives.***
Would like to get some clarification regarding how the geography will be defined/determined for this item. Will it be the location of the organization that receives the funds, their service area, or the location of where the individual resides who receives the services?

6. ***§50.9(i)(22) (B) – Selection Criteria: Negative Site Features.***
(vii) "Flight path": needs to be defined and the information to determine flight paths as defined needs to be a source that is readily available to the public.

7. **§49.6 (d) Credit Amount.**

500 San Marcos, Ste. 207 • Austin, Texas 78702 • Phone (512) 554-4721 • Fax (512) 233-2269 •
sarah@sarahandersonconsulting.com

The Department will limit the allocation of tax credits to no more than $1.2 million per Development....Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Developments will not count towards the total limit on tax credits per Applicant.

The $1.2 million per deal cap was instituted presumably to ensure that 9% tax credits are spread among the most deals possible. Unfortunately, as written, the cap does not delineate between the scarce/limited 9% credits and 4% credits which a property **may** qualify for. To encourage rehabilitation/reconstruction activities the $1.2 million cap should only apply to the 9% credits that an application would be eligible for.

REA

Concentration Rate.
Please outline specifically what data will be used to determine the number of units in each census tract. The rules state, "The Underwriter will independently verify the number of rental units in multi-unit buildings based on the most recent Census data and the completion of Department funded or other known rental developments in the area." Please define where the information on "other known rental developments" will be obtained so that the market analysts and developers have consistent information.

Pre-Application Market Area.
Consider allowing an applicant to voluntarily submit a preliminary market area at Preapp, which REA would review with any suggested changes and/or the addition of certain properties. This market area would not be binding, but would be intended as a guide to the applicant of what REA considers to be an appropriate approximation of a market area and what exiting tax credit properties should be included in the market area.

500 San Marcos, Ste. 207 • Austin, Texas 78702 • Phone (512) 554-4721 • Fax (512) 233-2269 •
sarah@sarahandersonconsulting.com

SHACKELFORD MELTON & MCKINLEY
ATTORNEYS & COUNSELORS

Benjamin D. Halpern
bhalpern@shacklaw.net

October 10, 2007

VIA ELECTRONIC MAIL
Members of the Board of Directors
Texas Department of Housing
and Community Affairs
507 Sabine, 8th Floor
Austin, Texas 78701

Re: Draft 2008 Housing Tax Credit Program Qualified Allocation Plan and Rules

Dear Members of the Board:

I have recently had the opportunity to review of the proposed changes to the Draft 2008 Housing Tax Credit Program Qualified Allocation Plan and Rules (the "Draft QAP") and would like to provide you with some of my comments concerning the proposed changes. Please note that capitalized terms not herein defined shall have the meanings set forth in the Draft QAP.

Section 50.9(i)(19) of the Draft QAP awards six points to proposed Developments located in census tracts where there are no other existing developments supported by housing tax credits. This section unfairly penalizes a proposed Development that may be located in the same census tract as a development supported by housing tax credits, but is for a different type of household. By way of example, a proposed Development whose units are not restricted to the age requirements of a Qualified Elderly Development, such as a multi-family development, should not be ineligible to receive the six points awarded under Section 50.9(i)(19) simply because a Qualified Elderly Development is located within the same census tract, as each of these developments would serve a different type of household, such as a multi-family.

Section 50.9(i)(16)(F) of the Draft QAP also unfairly penalizes proposed Qualified Elderly Developments, which limits a proposed Qualified Elderly Development to only four points if the development is located in an area with no other existing Qualified Elderly Developments supported by housing tax credits. To the extent no other Qualified Elderly Developments supported by housing tax credits are located in the area of a proposed Qualified Elderly Development, the development should be entitled to receive the same amount of points awarded to proposed developments under Section 50.9(i)(19) of the Draft QAP.

It should be noted that the Draft QAP already recognizes the distinction between different types of households located in the same area. Section 50.5(a)(8)(A) of the Draft QAP provides

3333 Lee Parkway
Tenth Floor
Dallas, Texas 75219
Phone 214.780.1400
Fax 214.780.1401
www.shacklaw.net

that an Application is ineligible if it proposes to construct a new development that is located one linear mile or less from a development that serves the *same type* of household as the new development, regardless of whether the development serves families, elderly, individuals, or another type of household. Thus, developments serving different types of households may be located within one linear mile or less from the other. This concept should also be applied to Sections 50.9(i)(16)(F) and 50.9(i)(19) to the extent a proposed Development located in the same area as an existing development supported by housing tax credits, but which serves a different type of household, should be eligible to receive the six points awarded under Section 50.9(i)(19).

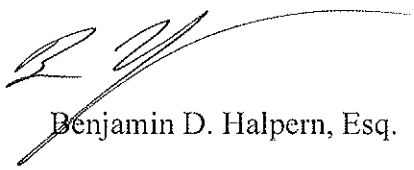
In consideration of the foregoing, I would propose that Section 50.9(i)(16)(F) of the Draft QAP be deleted and the first sentence of Section 50.9(i)(19) of the Draft QAP be amended as follows:

The Application may receive 6 points if the proposed Development is:

(A) located in a census tract in which there are no other existing developments supported by housing tax credits; *or*
(B) a development located in the same area as an existing development supported by housing tax credits, but which serves a different type of household as the existing development, regardless of whether the existing development serves families, elderly, individuals, or another type of household.

I appreciate your consideration of my comments. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Benjamin D. Halpern, Esq.

G:\shacklaw\Ben Halpern\2008 QAP Cmmts.2.doc

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 1:00 PM
To: Audrey Martin
Subject: FW: 2008 Draft QAP Comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 3:52 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: 2008 Draft QAP Comments

nother

-----Original Message-----
From: Ben Halpern [mailto:bhalpern@shacklaw.net]
Sent: Wednesday, October 10, 2007 3:28 PM
To: 2008rulecomments@tdhca.state.tx.us
Subject: 2008 Draft QAP Comments

Attached please find this firm's comments to the 2008 Draft QAP.

Should you have any questions, please do not hesitate to contact me.

Ben

_____

Benjamin D. Halpern
Shackelford, Melton & McKinley, LLP
3333 Lee Parkway
Tenth Floor
Dallas, Texas 75219
(214) 780-1400
(214) 889-9779 Direct Fax

Website: www.shacklaw.net
bhalpern@shacklaw.net

e-mail is a violation of federal criminal law.

Unless it specifically so states, this communication does not reflect an intention by the sender or the sender's client or principal to conduct a transaction or make any agreement by electronic means. Unless it specifically so states, nothing contained in this message or in any attachment shall satisfy the requirements for a writing, and nothing contained herein shall constitute a contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions.

IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

Increasing the supply and quality of affordable housing for Texans with limited incomes

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Sandi Williams
S. Williams HCDC

October 4, 2007

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comment on 2008 Qualified Allocation Plan

Dear Mr. Gerber:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), I want to thank you and your staff for working with the development community to develop the Qualified Allocation Plan for 2008. Because of your efforts, the comments from the TAAHP membership are minimal in scope.

I am pleased to submit the following comments on the draft of the 2008 QAP.

§49.9(i)(27)(B). It is suggested that penalty points with regard to a foreclosure or removal of a GP/developer be limited to those occurring within 6 years of an allocation of credits for a development, not forever.
With projects getting squeezed with no rent increases, and in fact rent decreases due to increasing utility allowances, and increasing operating expenses, good, qualified developers are now facing the additional risk of having a default with an older property. Changes in market or area conditions beyond a developer's control may also affect older properties.
One takes these risks with newer properties for which one needs to have responsibility through the typical guarantee periods which typically end around 5 years from commencement of construction (two years to build and lease up and then a 3 year guaranty period). Even lenders and syndicators don't require guarantees after this period of time. Without change, the industry may lose many of the better and more experienced developers since they are penalized for up to five years thereafter. The proposed six year limitation is supported by major syndicators such as SunAmerica, Boston Capital and others. In instances where there has been a lack of good faith by a developer, most lenders and investors would more than likely not do further business with such an applicant, thus the department has a secondary safeguard for those situations.

§50.3. Definitions
The addition of "Adaptive Reuse" as a category under rehabilitation requires adding a definition. TAAHP suggests: *Adaptive Reuse – The reconstruction or rehabilitation of an existing nonresidential development (e.g., a school, warehouse, hospital, etc.) into a residential development.*

§50.6(e)(2). Limitations on the Size of Developments. TAAHP requests that Rural Bond transactions be allowed to exceed the 80 unit new construction limit, as they have in previous years. We believe that market demand should determine the number of units, not an arbitrary number.

814 San Jacinto Boulevard, Suite 480, Austin, TX, 78701-2404
Phone: 512-476-9901 ❖ Fax: 512-476-9903 ❖ E-mail: jdale@taahp.org ❖ Web Site: www.taahp.org

§50.9(c). Adherence to Obligations. TAAHP believes strongly that developers should abide by the rules and regulations and should develop buildings as agreed upon; however, TAAHP believes that the penalties should be commensurate with the "crime". TAAHP provided testimony on this issue at the September 13, 2007 board meeting and looks forward to working with TDHCA to find an effective solution to the problem.

§50.9(h)(4)(A)(ii)Threshold Amenities. TAAHP requests the following clarifications:

> (X) Furnished Fitness center equipped with ***1 piece of equipment per 40 apartment units (but not less than 2)*** of the following fitness equipment options . . .
>
> TAAHP believes that the minimum of 5 pieces of equipment required as part of the 2008 QAP is not justifiable for smaller properties.
>
> (XXVI) Green Building. TAAHP requests clarification on which of these amenities must be provided in order to qualify for 3 points and suggests that there should be a test of monetary equivalency. For instance, the provision of recycling bins should not garner the same number of points as the installation of passive solar/heating cooling equipment.

§50.9(h)(4)(B),Threshold Amenities. TAAHP requests the following clarification:

> (iii). Disposals do not have Energy Star ratings and we request clarification within this category.

§50.9(h)(7)(A)(iv)(III), Readiness to Proceed/Site Control

This reads: "In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) plus costs identified in subparagraph (b), or the "as-is" value conclusion evidenced by subclause (II)(a). TAAHP suggests that the following phrase be added to this paragraph: "unless the land has been owned by the applicant for at least 5 years in which case the appraisal will be used."

This will ensure that properties not be "flipped" but allow a test of reason for entities which have owned land for a reasonable period of time, reducing the burden of having to produce years of invoices and financial statements justifying improvements.

§50.9(i)(2)(A)(vi) Quantifiable Community Support/Certification that Neighborhood Organization was not formed by Applicant/Developer. This year, TDHCA has inserted the following additional sentence to already burdensome requirements: *"Applicants may not request Neighborhood Organizations to change their boundaries to include the Development Site."* TAAHP requests that the last sentence of this paragraph be eliminated.

TAAHP fails to see why it is wrong for an applicant to ask to be included in a neighborhood's boundaries.

§50.9(i)(5)(A)(iv) – Selection Criteria/ The Commitment of Development Funding by Local Political Subdivisions. This year staff has increased the minimum term of the loan from a Local Political Subdivision from 1 to 5 years. TAAHP requests the reversion to the 2007 QAP – or alternatively make the minimum term 1 year or placed in service date, whichever is later. Our reason for this is that local governments cannot make mid- and long-term loans in today's economic climate. Cities agreeing to loan HOME funds or similar low-interest loans need to be able to get the funds paid back in a reasonable period

of time so that they can "recycle" them. Additionally, a five year loan has no appropriate role in the tax credit financing arena. It is too long to be short-term debt which is usually a construction or predevelopment loan – and it is not long enough to be permanent financing, which has an 18 year term minimum.

§50.9(i)(10) – Selection: Declared Disaster Areas
Clarification is needed on which disaster areas will be eligible. For instance, The Governor declared a statewide disaster area on March 17, 2006, for all 254 counties as a result of fire hazards caused by severe drought. The two-year period would make all counties eligible for these 7 points.

§50.9(i)(15)(3) – Selection Criteria: Economic Development Initiatives. Although there are points for projects to be located in certain economic development areas, these points are not allowed if there have been three tax credit projects in the area in the last 7 years.

The use of "three tax credit projects" as the barometer does not bear any relation to the size the community and does not take into consideration the size of the 3 projects. TAAHP requests that the test be the same as that used in Sections 50.6(g) and (h) whereby housing cannot be built in concentrated census tracts; i.e., census tracts exceeding 30%/40% housing tax credit units per household.

§50.9(i)(22) (B) – Selection Criteria: Negative Site Features.
TAAHP requests clarification on the following two new criteria, as follows:

> (vi) It is difficult to locate "sexually oriented businesses" with standard mapping programs. Further clarification as to the purpose of this section is needed and to the definition of what constitutes a "sexually oriented business.".
>
> (vii) "Flight path" may be too broad a term – "clear zone" is probably the more appropriate verbiage.

The QAP was changed last year giving the department the right to withdraw credits for an allocated transaction up to issuance of 8609s due to noncompliance on another deal with the same developer. This change needs to be deleted in order protect the investor/lender community. If such a situation arose and the credits were withdrawn, the big losers would be the stakeholders who had the cash invested. If this happened, no lender or investor would then support a Texas deal.

§50.17(c) Challenges to Applications.
TAAHP supports the imposition of a deadline for the submission of challenges.

Again, I want to compliment the staff on its incorporation of comments and concerns already voiced by the affordable housing industry. We look forward to working with you to incorporate the items which our membership has identified as continuing to be problematic.

Sincerely,

Jim Brown
Executive Director

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 04, 2007 12:57 PM
To: Audrey Martin
Subject: FW: 2008 QAP - TAAHP Governmental Affairs Consensus Document

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jim Brown [mailto:jbrown@taahp.org]
Sent: Thursday, October 04, 2007 11:40 AM
To: 'Michael Gerber'; 'Brooke Boston'; 'Robbye Meyer'; 'Kevin Hamby'
Cc: 'Mike Sugrue'; 'Mike Clark'; 'Diana McIver'; 'Granger MacDonald'; 'Jackson, Toni'; Linda.Mcmahon@chase.com; nicole.flores@pnc.com; George.Littlejohn@novoco.com; 'Dan Markson'; bkahn@hettig-kahn.com; dennishoover@hamiltonvalley.com; 'Bast, Cynthia L.'
Subject: 2008 QAP - TAAHP Governmental Affairs Consensus Document

Mike and Senior Staff:

The attached is TAAHP's comments on the proposed 2008 QAP. Because of your staff's efforts, TAAHP's comments are minimal in scope. Original manually executed copy of the attachment is being delivered to our office today.

We appreciate your consideration on our comments as you move toward the final draft. Should additional information be of value to you in this process, please contact me. Good luck.
Jim

Jim T. Brown
Executive Director
TAAHP
814 San Jacinto, Suite No. 408
Austin Texas 78701-2404
Office: 512/476-9901
Fax: 512/476-9904
Mobile 830/285-6680
www.taahp.org

October 10, 2007

SENT VIA EMAIL: 2008rulecomments@tdhca.state.tx.us
Texas Department of Housing & Community Affairs
2008 Rule Comments
P.O. Box 13941
Austin, Texas 78711-3941

RE: Comments on Proposed 10 TAC §§ 50.1 – 50.23

To Whom It May Concern:

Texas Legal Services Center ("TLSC") files these comments on the Texas Department of Housing & Community Affairs ("TDHCA" or "the Department") proposed amendments to 10 TAC §§ 50.1 – 50.23, concerning the 2006 Housing Tax Credit Program Qualified Allocation Plan and Rules. Comments were to be received by October 10, 2007; thus, these comments are timely submitted.

§50.9(h)(4)(B) Threshold Criteria / Amenities

According to the proposed rules, in order for an application to be approved for the Housing Tax Credit Program, the applicant must certify that units in the development provide certain amenities at no charge to the tenants. TLSC feels it is imperative that these amenities include the needs of the disabled. Thus, TLSC recommend that developments serving a mixed population of persons (ie family and elderly) be required to have at least 10% of the units compliant with the Americans with Disabilities Act of 1990. For developments serving only an elderly population, we recommend that the development be required to have at least 20% of the units ADA compliant. Further, in all housing tax credit program developments, a minimum of 15% of the units should be fully accessible (wheel chair accessible) to those with limited mobility, including but not limited to wheel chair access to the entrance and kitchen and bathroom facilities. TLSC suggests the following additions to the language of the proposed rule:

> (x) Compliance with the Americans with Disabilities Act of 1990 in:
>
> (i) 100% of units for developments serving mixed populations (family and elderly);

(ii) 20% of all units have full accessibility (wheel chair accessible) for those with limited mobility, including but not to the entrance and kitchen and bathroom facilities.

TLSC appreciates the opportunity to comment on the proposed amendments.

Respectfully Submitted:

TEXAS LEGAL SERVICES CENTER

Randall Chapman
Carrie R. Tournillon
815 Brazos, Ste. 1100
Austin, Texas 78701
Tel: 512/477-6000
Fax: 512/477-6576

By: _____
Carrie R. Tournillon

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:43 PM
To: Audrey Martin
Subject: FW: Comments on Proposed TDHCA rules

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Thursday, October 11, 2007 7:53 AM
To: 'Patricia Murphy'; 'Robbye Meyer'; 'Tom Gouris'
Subject: FW: Comments on Proposed TDHCA rules

Please pick your rule

-----Original Message-----
From: Kevin Hamby [mailto:kevin.hamby@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 5:14 PM
To: 'Jeff Pender'
Subject: FW: Comments on Proposed TDHCA rules

I do not know if you got these so I am forwarding them to you. Thanks.

Kevin Hamby

-----Original Message-----
From: Randy Chapman [mailto:rchapman@tlsc.org]
Sent: Wednesday, October 10, 2007 4:57 PM
To: Kevin Hamby
Cc: michael.gerber@tdhca.state.tx.us; Carrie Tournillon
Subject: Comments on Proposed TDHCA rules

Kevin-

Please find attached electronic copies of comments being filed today based on the request published in the Texas Register. For your convenience, we have submitted redline draft language for your review and consideration. The comments focus on the need for current and accurate allowances for utility allowances and for the proper monitoring to ensure compliance.

We have also suggested language to ensure that some of the units are fully accessible to persons who are mobility impaired.

Thank you in advance for your consideration of these comments. A hard paper copy is also being hand-delivered.

Randy Chapman
Texas Legal Services Center

Audrey Martin

From: Robbye Meyer
Sent: Monday, October 15, 2007 10:11 AM
To: Audrey Martin
Subject: FW: QAP Public Comment

Here is Mr. Chapman's clarification. Please change comment accordingly. Thanks.

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Randy Chapman [mailto:rchapman@tlsc.org]
Sent: Monday, October 15, 2007 10:07 AM
To: Robbye Meyer
Cc: Carrie Tournillon
Subject: RE: QAP Public Comment

Mr. Meyer—

Thank you for the quick follow-up. Our office was working from two drafts and there was a clerical error in what was sent.

Certainly all units should be ADA compliant, however we also recognize the fact that certain garden-type apartments in non-elderly settings may have 2nd floor stair entrances with no elevators. The point we are making is to ensure that an adequate proportion of units for the elderly and family units with a disabled person both have units readily available to persons who require wheelchair access. In addition to door entry access, this would include access to sinks, commodes, shower units, etc.

Any goal is better than no goal if the units are to be built to accommodate this population group. For family units, where there is a disabled person in the household, there should be a reasonable minimal standard for mobility access such as 10%, and for units designed for the elderly and disabled, the percentage should be higher (i.e. 20%).

Our office works with organizations that serve the elderly poor and those with disabilities. Many have high out of pocket medical expenses, and access to safe, affordable housing is critical to their life and safety. I hope the Department will consider the needs of these special population groups in adopting the final rule.

Randall Chapman
Texas Legal Service Center

From: Robbye Meyer [mailto:robbye.meyer@tdhca.state.tx.us]
Sent: Monday, October 15, 2007 9:14 AM
To: Randy Chapman
Cc: Robbye Meyer

Subject: QAP Public Comment

Mr. Chapman,

Could you please clarify your comments to the QAP?

In the body of the narrative you state "developments serving mixed population of persons be required to have at least 10% of the units ADA compliant" and "developments serving elderly be required to have 20% of the units ADA compliant" and "a minimum 15% of all HTC units be fully accessible".

In the proposed language you state "100% of units for developments serving mixed population be ADA compliant" and "20% of all units be fully accessible".

I do not understand what you are wanting.

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

Texas NAHRO

Texas Chapter of the National Association of Housing and Redevelopment Officials

October 10, 2007

TDHCA
2008 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

Dear Committee Review Board:

Please consider the following comments regarding TDHCA's 2008 Qualified Allocation plan:

Section 50.3(13), (page 4 of 84) At Risk Development, needs to include Section 9 of the National Housing Act because existing projects assisted under this Section of the Act are at risk of losing their affordability due to continuing reductions of Federal financial assistance necessary to properly maintain the projects. Many of the properties assisted by Section 9 are more than 60 years old and most are more than 40 years old, making them obsolete as well as in dire need of major rehabilitation. In July 2007, HUD reported "A study for HUD entitled 'Capital Needs of the Public Housing Stock in 1998" estimated a $22 billion capital needs backlog for public housing properties. The study also noted a $2 billion annual accrual in capital cost for ongoing repairs and replacements beyond ordinary maintenance for all public housing units. Annual appropriations for public housing capital expenses, which range from $2 billion to $3 billion, will not by themselves address the backlog and accruing replacement and repair capital needs."

The definition of at-risk needs to also include projects with project based Section 8 Certificates and/or Vouchers administered by local Housing Authorities. These properties are at-risk of losing their affordability because of significant deferred maintenance due to the low restricted rents.

Section 50.3(55)(c) (page 7 of 84) needs to be revised to allow at least one unit with more than 2 bedrooms if occupied by the property manager or a maintenance employee.

Section 50.3(62) (page 8 of 84) needs to show that a neighborhood organization includes a Residents Council.

The definition of "Rehabilitation" in Section 50.3(80) (page 10 of 84) was broadened to include **reconstruction** of demolished units on the same site. The definition needs to include reconstruction of demolished units on a new site if the existing site is unsuitable due to negative site features such as environmental issues or location in a flood plain, conditions in the area surrounding the project

Texas NAHRO
P.O. Box 416 Olney, Texas 76374
Phone (800) 617-2900/**Fax** (940) 564-3585

adversely affect the health or safety of the residents or other factors make the site unsuitable for housing or the feasible operation of the project, or another location is in the best interest of the residents (e.g., closer to amenities or lower density by a larger site), or for other reasons acceptable to the Department. In addition, reconstruction of a larger number of units than previously existed should be allowed if the site's size allows for additional units and the additional units are restricted for occupancy by renters with incomes at or below 50% of median income.

Section 50.5 (page 13 of 84) should provide that an application is ineligible if there is participation by a governmental entity if it is not legally authorized to operate in the area where the proposed project is located. A similar provision should be made for nonprofit participation regarding their bylaws and articles of incorporation not allowing such participation.

Section 50.6(d) Credit Amount (page 17 of 84), unfairly proposes to impose the $2 million limitation to a Housing Authority and nonprofit entities based on individual board members and executive directors participation in other applications. It is unfair to count the amount of a volunteer board member of a housing authority or a nonprofit entity who may also be a developer in their private business that is unrelated to the housing authority or nonprofit entity or vice verse. It is also unfair to count the amount of an application by an unrelated entity simply because an executive director may serve as a board member of the unrelated entity. This section needs to be revised so that an application(s) by unrelated entities or applicants do not count for the $2 million limitation. Similarly, the $2 million limitation should not apply a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.

The description of funding sources in **Section 50.5(a)(8)(D) (page 14 of 84)** should also include the Housing Authority Capital Fund.

Section 50.6(h), page 19 of 84), Limitation on Developments Proposing to Qualify for a 30% Increase in Eligible Basis, needs to be revised to allow the 30% increase in eligible basis if the development is "Rehabilitation" or "Reconstruction."

Section 50.7(b)(3) (page 20 of 84) correctly deducts the 15% set aside for at-risks projects from the state ceiling prior to the application of the regional formula.

Section 50.9(c), Adherence to Obligations (page 25 of 84), should be revised as follows *(red Language denotes suggested changes):*

2) The Board shall impose a penalty upon the Developer or Development Owner, as follows:

(a) For the first violation, a fine of $25,000, payable to the Housing Trust Fund;
(b) For the second violation, a fine of $50,000, payable to the Housing Trust Fund;
(c) For the third and subsequent violations, the ~~(2) The~~ Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable**,** or the Department must:(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; and the placed in service date; or the date the amendment is accepted by the Board**, and** (B) Prohibit eligibility to apply for housing tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming

Texas NAHRO
P.O. Box 416 Olney, Texas 76374
Phone (800) 617-2900/**Fax** (940) 564-3585

Development for up to 12 months from the date that the non-conforming aspect, or lack of financing, was identified recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.
~~(C) In addition to, or in lieu of, the penalty in subparagraph A or B of this paragraph, the Board may assess a penalty fee of up to $1,000 per day for each violation.~~

50.9(h)(i)(7)(A)(v) – page 38 of 84 – unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. The QAP needs to be revised to allow as acquisition costs the as-is appraised value because an applicant may have owned a property for a significant period of time and not able to document the costs of owning, holding or improving the property. It is unfair to not allow for the appreciated value of the property. The correct and fair costs are as supported by an independent appraisal and the QAP should allow the appraised value. Limiting property acquisition cost to "the lesser of" the original acquisition cost or current appraised value unfairly penalizes housing authorities trying to rebuild dilapidated housing units, many of which were constructed over 60 years ago.

Section 50.9(h)(8)(B) on Page 42 of 84 requires installation of a sign on the property prior to the submission of an application, and requires the sign to state the date, time and location of the public hearing. This will not be known when the sign is installed. The QAP need to be revised to delete this provision or for meeting date to be posted after TDHCA posts the meeting dates.

Section 50.9(h)(9) (page 43 of 84) should require that if the development's proposed ownership includes participation by a governmental entity or an instrumentality or affiliate of a governmental entity as the Applicant, Development Owner, Developer, or source of commitment for development funding must provide evidence that they are legally authorized to operate in the area where the proposed project is located. If there is nonprofit participation, evidence should be provided that their bylaws or articles of incorporation show they are authorized to so participate. An example is a county housing authority applying in a municipality where it does not have a cooperation agreement or a local finance agency participating outside their area of jurisdiction based on state law.

Section 50.9((i)(2)A(iv), Quantifiable Community Participation (page 48) unfairly limits participation by resident councils to "Rehabilitation" or "Reconstruction" of the property occupied by the residents. A Residents Council should be allowed to comment and appropriately be scored for new construction if the proposed new construction is within the boundaries of the property in which they reside or within the boundaries of their organization. TDHCA should not penalize a Residents Council or consider them to have lesser rights as a neighborhood organization simply because they reside in Public Housing.

Section 50.9((i)(5)A(v), (page 52 of 84) limits credits for in-kind contributions for the period between the award or August 1, 2008 and the placed in service date. Does this mean that if an entity contributes the leasehold value of land it will be limited to less than full value (e.g., only to place in service date)? If so, this is a very unfair provision that needs to be deleted. A contribution of land on a lease value should be allowed full value for at least the initial compliance period.

Texas NAHRO
P.O. Box 416 Olney, Texas 76374
Phone (800) 617-2900/**Fax** (940) 564-3585

Section 50.9(i)(6), support by State Senator or Representative (page 53 of 84), shows opposition letters are -14 points. The AP needs to show that if 2 opposition letters are received, the total deduction cannot exceed -14 points.

Section 50.9(i)(17), development in non-uran area (page 57 of 84). There is no justifiable basis for awarding 6 points simply because a development is in a locality with less than 100,000 in population. This provision should be deleted from the QAP or lowered to 3 points.

Sincerely,

James L. Hargrove
Chairman of the Legislative Committee
and
President & CEO of the Housing Authority of the City of Austin

Texas NAHRO
P.O. Box 416 Olney, Texas 76374
Phone (800) 617-2900/**Fax** (940) 564-3585

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:58 PM
To: Audrey Martin
Subject: FW: TX NAHRO Comments for 2008 QAP

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 4:05 PM
To: 'Robbye Meyer'; Brooke Boston
Subject: FW: TX NAHRO Comments for 2008 QAP

-----Original Message-----
From: JUDY PACIOCCO [mailto:JUDYP@hacanet.org]
Sent: Wednesday, October 10, 2007 3:49 PM
To: 2008rulecomments@tdhca.state.tx.us
Cc: nono62@swbell.net; JIM HARGROVE; JUDY PACIOCCO
Subject: TX NAHRO Comments for 2008 QAP

TROPICANA BUILDING CORPORATION

4655 COHEN AVE • 915-821-3550 • EL PASO, TEXAS 79924

October 11, 2007

Robbye Meyer
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2008 QAP AND PROPOSED 2008 UNDERWRITNG RULES

Dear Robbye,

Following are our comments on the Draft 2008 QAP:

1. 50.9(h)(4)(A)(ii)(XXV) Green Building: Please include evaporative cooling in this item. Evaporative coolers are accepted as a green building technique by the EPA, the IRS, and RESNET in the federal energy tax credit, so we believe it should be included in this point item also.

2. 50.9(i)(3)(B) Income Levels of Tenants of the Development: Along the Texas border, where the 4 poorest counties in the United States are located, it will be extremely difficult (if not impossible) to reach this level of income targeting. The prior criterion from the 2007 QAP is much more reasonable for our area and other areas along the border, and insures that feasible projects are done. For example, a family of 3 in El Paso County must make below $23,280 to qualify for a 60% unit, while that same family could easily qualify for a 40% unit in many other areas of the state.

   We request that the 2007 language for this item be reinstated, at least for counties along the Texas-Mexico border.

   Further, we request that PHA applicants who are subsidizing rent and operating expenses with HUD money be excluded from these points. PHAs are also exempt from property, sales and income taxes, allowing them an unfair advantage over the private sector and an ability to build and operate less efficiently than private sector developments. We feel that it is the responsibility of TDHCA to provide a level playing field for all applicants and exempting PHAs from these points would do this.

3. 50.9(i)(5)(A)(v) In-Kind Contributions: We support this language change. Tax exemptions and abatements already provide a tremendous advantage to non-tax paying entities over tax paying private entities.

TROPICANA BUILDING CORPORATION

4655 COHEN AVE • 915-821-3550 • EL PASO, TEXAS 79924

4. 50.9(i)(8) The Cost of Development by Square Foot: We request that language be added allowing the cost per square foot numbers be increased each year, commensurate with the CPI or some other inflation index. The change we request is consistent with the language that you have added this year for section 50.6 (d) Credit Amount, language that we also support.

5. 50.9(i)(18) Demonstration of Community Support other than Quantifiable Community Participation: We support the language change in this section. We have observed what we feel are some NIMBY-type actions by leaders of some of these organizations who let personal issues get in the way of their mandated government functions.

6. 50.16(k) Return of Credits: We support this additional language which heavily penalizes the return of credits by a developer. The return of credits not only negatively affects the community in which the award was made, but also affects future amounts of credits received by TDHCA from the national pool.

This concludes our comments on the proposed 2008 Draft QAP.

We also submit the following comments on the proposed 2008 Draft Real Estate Analysis Rules and Guidelines:

1. Regarding "Operating Feasibility" we request that the policy of allowing PHAs to violate all requirements of providing revenue and expense projections which fall within the bounds of the well-established guidelines of Real Estate Analysis by effectively allowing PHAs to state "HUD monies will make up the difference," is wrong and should not be allowed.

   The tax credit program has been the most successful affordable housing program ever instituted by the Federal Government, and the vast majority of that success is due to strict underwriting standards by the state agencies and diligent work of private developers. We understand that HUD is cutting back on development money to PHAs around the country, and encouraging PHAs to get involved in the tax credit business. We feel this public policy decision is flawed, however if PHAs are going to start directly competing for tax credits every year, then they should be held to the same Net Operating Income and Debt Coverage Ratio standards as every other tax credit developer.

   PHAs already have a decided advantage in not having to account for operating expenses they are exempt from paying, such as property taxes. To further allow PHAs to call a "Kings X" and ignore the underwriting standards for operating feasibility is wrong and should not be allowed.

TROPICANA BUILDING CORPORATION

4655 COHEN AVE • 915-821-3550 • EL PASO, TEXAS 79924

This concludes our comments for the 2008 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. “Bobby” Bowling IV
President

Audrey Martin

From: Robbye Meyer
Sent: Thursday, October 11, 2007 12:42 PM
To: Audrey Martin
Subject: FW: 2008 QAP and Underwriting Comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Jeff Pender [mailto:jeff.pender@tdhca.state.tx.us]
Sent: Thursday, October 11, 2007 7:55 AM
To: 'Tom Gouris'; 'Robbye Meyer'
Subject: FW: 2008 QAP and Underwriting Comments

-----Original Message-----
From: Kevin Hamby [mailto:kevin.hamby@tdhca.state.tx.us]
Sent: Wednesday, October 10, 2007 5:14 PM
To: 'Jeff Pender'
Subject: FW: 2008 QAP and Underwriting Comments

-----Original Message-----
From: Bbowling4@aol.com [mailto:Bbowling4@aol.com]
Sent: Wednesday, October 10, 2007 4:01 PM
To: robbye.meyer@tdhca.state.tx.us; kevin.hamby@tdhca.state.tx.us
Cc: Jimeneztrop@aol.com
Subject: 2008 QAP and Underwriting Comments

Robbye and Kevin,

Please accept the attachment as our comments for the 2008 QAP and Underwriting Comments. Thank you.

R. L. "Bobby" Bowling IV
President
Tropicana Building Corporation
4655 Cohen
El Paso, TX 79924
(915) 821-3550

Audrey Martin

From: Robbye Meyer
Sent: Thursday, September 27, 2007 6:04 PM
To: Audrey Martin
Subject: FW: Comments to the 2008 QAP

QAP comments

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-2213 (voice)
(512) 475-0764 (fax)

-----Original Message-----
From: Brockette, Scooter - Temple, TX [mailto:Scooter.Brockette@tx.usda.gov]
Sent: Thursday, August 23, 2007 4:58 PM
To: Tom Gouris; Robbye Meyer
Cc: Jeff.Crozier@rrhatx.com
Subject: Comments to the 2008 QAP

Hi Tom and Robbye.

Ginger provided me with some info on an idea she had on providing incentive points to 538 applicants who provide required info to the lender so that USDA Rural Development receives the applications by June 1st. I agree with Ginger's idea. I think extra points would be an incentive to applicants to get the material to lenders so that we can get the proposals reviewed as early in the year as possible.

Because of the lateness in the year that most of the applications were received, I project only being able to fund about 3 of them. The others will remain in process but will have to be handled when the FY 2008 NOFA comes out. If more of the applications had come in to us in June, we would have a better chance of getting more funded and bringing more funds to rural Texas.

It may not seem like much, but receiving the application two months earlier in June instead of August really translates into it being possible to start and complete the construction of the projects a year earlier.

We had conference calls with all of our 538 applicants and the lender in early summer this year to discuss their applications. One of the main topics during these calls was the timing of them submitting the material to the lender and then to USDA Rural Development. Ginger and her group worked hard on getting the material together in a timely manner but could only do so much when waiting on applicants to give her what she needed.

I think some sort of point incentive would help this situation.

I have included Jeff Crozier on this email.

Thanks.

SCOOTER BROCKETTE
Housing Programs Director
101 S. Main, Suite 102
Temple, Texas 76501
VOICE 254.742.9765 FAX 254.742.9735
CELL 254.718.6780
EMAIL: Scooter.Brockette@tx.usda.gov

TDHCA, 2008 Rule Comments
P.O. Box 13941
Austin, TX 78711-3941

Dear TDHCA Professional:

I am seeking clarification of section 50.9(h)(7)(A)(iv) of the 2008 proposed QAP and section 1.32(e)(1)(B) of the 2008 proposed Real Estate Analysis Rules regarding the allowable property acquisition price and the required documentation regarding a transaction classified as an identity of interest. Please confirm that in the event the proposed acquisition price is at or below the substantiated original acquisition cost, no appraisal is necessary. Also please confirm that in situations where the outstanding debt on the property is below the original acquisition price, the transferor can provide seller financing.

Regarding section 50.9(h)(4)(B) please explain the acronym SRO. Also regarding this same section, as a resident and manager of multi-family developments in a rural area, many times 911 access is not available in the area This threshold item would thereby bar development in such an area. Also requiring new dishwashers, ovens, refrigerators and ceiling fans is excessive and in many situations wasteful for rehab developments especially in rural areas.

Thank you for the opportunity to comment on the draft documents and I look forward to your response.

Viola Salazar

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2007 STATE OF TEXAS
CONSOLIDATED PUBLIC HEARING

Room 2.110
Joe C. Thompson Conference Center
2405 Robert Dedman Lane
Austin, Texas

October 4, 2007
6:00 p.m.

PRESIDING: BRENDA HULL

ALSO PRESENT:

VERONICA CHAPA, TDHCA
ROBBYE MEYER, TDHCA
KEVIN SMITH, ORCA

ON THE RECORD REPORTING
(512) 450-0342

A G E N D A

P R O C E E D I N G S

MS. HULL: Good evening, everyone. Welcome to the 2007 State of Texas Consolidated Public Hearing. These hearings are an opportunity to comment on a significant portion of the Texas Department of Housing and Community Affairs, the Office of Rural and Community Affairs and the Texas Department of State Health Services and rural policy, rural and planning documents.

All the documents under review are viewable at the TDHCA web site. If you haven't already done so, please take this opportunity to silence any communication devices. And for anyone interested in speaking, you will need to fill out an witness affirmation form. They are located on the outside table.

And as you speak, please provide your name and who you represent. And we have a microphone here at this front table, so if anyone wants to give public comment, we ask that you come up to this front table, and it will be recorded for the official record.

The comment period for the rules is September 10 through October 10 for all documents, with the exception of the HOME program rule and the accessibility requirements rule. The public comment period for the HOME program rule and the accessibility requirements rule is

September 24 through October 29.

Written comment is encouraged, and it can be provided any time during the public comment period. You can send your public comments on the rules to an e-mail address: 2008rurecomments@tdhca.state.tx.us or by mail to TDHCA 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941. You can also fax comments on the rules to 512-475-3978.

The first document under public comment is the 2007 State of Texas Consolidated Plan One Year Action Plan. TDHCA, ORCA, and the Department of State Health Services, we prepared the 2008 State of Texas Consolidated Plan One Year Action Plan according to the U.S. Department of Housing and Urban Development reporting guidelines.

The Plan reports on the intended use of funds received by the State of Texas for the program year 2008, which runs through February 1, 2008 and ends on January 31, 2009. The Plan illustrates the state strategies in addressing the party needs and specific goals and objectives identified in the 2005 to 2009 Consolidated Plan.

The Plan covers administration of the Community Development Block Grant program, the emergency shelter grants program, the Home Investment Partnerships program

and the Housing Opportunities for Persons With AIDS program. And from ORCA, we have Kevin Smith to talk about the Community Development Block Grant program.

MR. SMITH: Again, my name is Kevin Smith with ORCA. And this year, since this was actually the second year of the two-year biannual, there wasn't a lot of changes to the community development. And the community development supplemental fund, and as well, as the colonia construction fund. These funds, or any other biannual funds, there were no changes representing those.

Our microenterprises, our small business loans, and our STEP grant though, there are some proposals for the scoring factors. Those are due to the RRC meetings, that is happening right now. Those are being proposed. On our microenterprise loan, there is a proposal to bring that to a semiannual selection, to be able to help add it a little bit.

We have a new program, though. It is the renewable energy pilot program. This is going to be a pilot program from deobligated funds. And there are going to be a 500,000 in deobligated funds, maximum of 500,000 to 50,000 as a minimum.

There is a couple of scoring factors. The type of project is 15 points. The technology method is ten

points. The implication in other rural areas is ten points. The long costs, or benefit to the renewable energy goals is ten points. The partnership is ten points. Leveraging is ten points. And relocation in rural areas is ten points.

And that is all that we have actually from ORCA. Like I said, there wasn't a whole lot of changes since this is the two year biannual selection.

MS. HULL: Well, I didn't receive any witness affirmation forms for the CDBG program. Would anybody like to provide public comment?

(No response.)

MS. HULL: The next action plan for public comment is for the Home Investments Partnership program. And we have Veronica Chapa.

MS. CHAPA: Hi. My name is Veronica Chapa, and I am with the Home Investments Partnership program, and I am going to be speaking related to the Action Plan. The Home Investments Partnership program, referred to as the HOME program, awards funding to various entities for the purpose of providing safe, decent, affordable housing across the State of Texas. To provide this kind of support to communities, HUD awards an annual allocation of approximately $41 million to TDHCA.

Under the HOME program, TDHCA awards funds to applications for the administration of the following activities. One, the housing assistance program. Provides down payment and closing cost assistance, up to $10,000 for eligible households.

Two, contract for deed conversion program, which is categorized under the housing assistance activity, provides funds to convert single-family contract for deed into a warranty deed, and also provides funds for the rehabilitation for reconstruction of the units. $2 million is set aside each year from the HOME program in annual allocation.

Three, the owner-occupied housing assistance program provides funds to eligible homeowners for the rehabilitation or reconstruction of single-family houses. Four, tenant-based rental assistance program. Provides rental subsidies which may include security deposits to eligible tenants for a period of up to 24 months.

Five, the rental housing development programs provides the funds to build, acquire and or rehabilitate affordable multifamily housing. This activity also includes the Community Housing Development Organization CHDO set-aside, which is 15 percent of the total HOME allocation. Are there any comments on the HOME Action

Plan at this time?

MS. HULL: The Housing Opportunities for Persons With AIDS program. Oh, I am sorry.

MR. HUNTER: Are you asking for comments on --

MS. HULL: The Action Plan -- there will be opportunity for comment on the rules at a later time.

The Housing Opportunities for Persons With AIDS program. The Texas Department of State Health Services addresses the housing needs of people with HIV AIDS through the HOPWA program, which provides emergency housing assistance in the form of short-term rent, mortgage and utility payments to prevent homelessness; tenant-based rental assistance which enables low income individuals to pay rent and utilities until there is no longer a need, or until they are able to secure other housing; supportive Services, which provides case management, basic telephone assistance and smoke detectors and permanent housing placement, which allows assistance for reasonable security deposits, related application feeds and credit checks.

If you have any questions regarding HOPWA, you can contact the Department of State Health Services at 512-533-3000. Any public comment on this item?

(No response.)

MS. HULL: The next item up for public comment is the Regional Allocation Formula. TDHCA is legislatively required to use a formula to regionally allocate its HOME, Housing Tax Credit and Housing Trust Fund funding. The resulting formula objectively measures the affordable housing need and available resources in the 13 state service regions. The formula allocates funding to urban and rural regions as well.

As a dynamic measure of need, the formula is updated annually. I did not receive any witness affirmation forms for the Regional Allocation Formula. Would anybody like to provide public comment?

(No response.)

MS. HULL: The Affordable Housing Needs Score is the scoring criteria used to evaluate HOME, Housing Tax Credit and Housing Trust Fund applications. It is not specifically legislated, but the score helps address other need based funding allocation requirements. Any comments on the Affordable Housing Needs Score?

(No response.)

MS. HULL: Next we will move on to the program rules, the Housing Tax Credit allocation plan and rules. It establishes the 2008 rules for the Housing Tax Credit program. This program uses federal tax credits to finance

the development of high quality rental housing for income eligible households, and is available statewide.

I have several witness affirmation forms for the QAP. The first is Rick Deyoe. Would you please come up here to the font table? Thank you.

MR. DEYOE: Hello. Rick Deyoe with RealTex Development Corporation. And I have got my comments in writing; I just wanted to make a couple of points. One thing I wanted to comment on was the proposed changes to the QAP regarding amendments and the approval of amendments prior to or any change in the project.

I am all for the proposed penalties that are suggested as it relates to negative -- or when I say negative, I guess changes that are detrimental to the project. But in many instances, as a developer, changes occur, come up while the project is under construction; the city may require you to do something different.

And for us to stop construction and have to go to the TDHCA to get an approval of an amendment may cost the project 30 to 60 days of time. And as you know, we as developers are on the hook for delivering tax credits to our syndicators within a certain time frame.

So that having been said, so long as it is not a negative impact or detrimental to the property, I would

suggest some language be added to the QAP, that if it is a positive change -- in many instances, we will change projects, such as adding additional amenities that weren't originally in the plan, and yet, under the current QAP. Rules, that is a change that requires an amendment.

Even as a positive change for the development, if we don't come to you all first to get that approved, then we are subject to the penalties. That is the only real change that I would propose to that, as well as the additional information that has been provided in tabs, written responses.

And so what I had suggested is that if the item was not produced as the development was represented in the application and such development changes resulted in negative impact to the project, and then pick back up where the language is.

Other than that, I would also go on to state that Real Tex is also supportive of the proposed changes to the QAP that the developers of the Mueller redevelopment site are proposing as it relates to urban infill sites and trying to do high-density urban infill site and the cost that's related to those.

MS. HULL: Thank you. Mr. Anderson?

MS. ANDERSON: Good evening. My name is Sarah

Anderson, representing S. Anderson Consulting. And I also have my comments in writing, and just want to hit a couple of highlights. Most of mine actually will mirror what TAAHP has already submitted, but I do have a couple of clarifications.

With regard to adaptive reuse, I would like to see in the definition something that actually identifies the adaptive reuses would be the rehabilitation of a nonresidential structure, because there is no definition.

And I know definitions have been thrown around, but I think that it should be a structure and not open land, as I know that -- I am in support of the Robert Mueller redevelopment, but not of the land and calling that adaptive reuse.

Also, if there could be a clarification as to whether or not the original building size can be added to and would still be considered adaptive reuse. We would like to know that.

MS. HULL: New units be added to --

MS. ANDERSON: Whether or not the structure can be added to: If I have a building that I found that is 10,000 square feet and I want to add 2,000 to that, you know, to the external structure, or going up, would that still be considered adaptive reuse, or is it only using

the original frame of what's there. So just some clarification.

Let’s see. With regard to the local political subdivision, changing the loan -- the minimum loan terms from one-year to five-year. And TAAHP had mentioned that there were issues with wanting to recycle local government money.

But there is also evidently a statute for public housing authorities, which is one of the entities. And if they are going to do a loan longer than a year, they have to get an Attorney General opinion to do so, which is incredibly difficult to do. So we would like to see the language go back to one year rather than the five.

With regard to the economic development initiatives, we would like to see some clarification about how the geography of that will be determined as we have been doing research. It's hard to say whether or not the location would be the actual head office of the organization that gets the money, their service area, or the individuals that receive the money. So if someone just clarify how we can tell what those areas would be.

Negative site feature on the flight path, we would like to see a definition. And in addition to a

definition, something that is readily available so that we all understand what -- how we can identify, based on that definition, what that would be. Right now flight path -- frankly, anyplace in the U.S. would probably technically be within a flight path. So we would just like to see that tightened up a little bit.

In addition to the QAP, I don't think TAAHP has -- has to do with the 1.2 million cap per development. I understand that this is a Board-instituted cap, and the thought initially, I believe, was to be able to spread the 9 percent credits around as much.

I would like to see a delineation to help encourage rehab and adaptive reuse -- would be a delineation for that cap between 9 percent credits and the possible 4 percent credits that we might be eligible for, if we find a property to rehab that has been owned for ten years.

That property would be eligible for 4 percent credits, but the way that it is underwritten right now is that the 4 percent credits would be added to your 9 percent. And what happens is, your rehab -- you max out at the 1.2 very quickly, and you are not able to take advantage of the 4 percent credits. So we would like to see that specifically mentioned, that the 1.2 cap is only

on the 9 percent side. I guess I have some comments on REA and compliance.

MS. HULL: Can we take those --

MS. ANDERSON: We can take those later.

MS. HULL: Yes. Okay.

Matt Whelan?

MR. WHELAN: Good evening. My name is Matt Whelan with Catellus Development Group. We are the developers responsible for the redevelopment of the former Robert Mueller Municipal Airport here in Austin. We have some other folks with us who will be talking. I am going to talk briefly about the project and some of the rules and how it affects some of the things that we would like to do.

And then Jim Walker is here, as the chairman of the plan implementation advisory committee for the project; as well as Scott Marks, who is one of our consultants, an attorney who will talk some about more of the details.

But first, this project is unique in a number of ways. First, it was city property; the concepts for it were germinated through literally 25 years of community involvement and community input and crafted with a clear vision of a mixed-income community, the location of the

property being two miles from the University of Texas, three miles from downtown. Transit was important. A compact community, walkable, sustainable.

All these things were fundamental keystones of the vision for the project. Catellus was selected not to come in and to impose its vision on the property but rather to execute on the vision that the City of Austin and its residents, through the communities, had crafted. And that is what we are committed to do and are in midstream of doing, as we speak.

Some of the aspects of the project, just that set it apart: Again, 140 acres, or over 20 percent of it will be parks. Every resident in the project will be within about 600 feet of the parks -- of any park. Or each resident will be within a park, I should say. The concept is that it is inclusive. It is mixed income. It is mixed use.

It is compact and walkable. People will be able to walk to retail, to offices, to work environments. It is designed to fold into the existing and future transit opportunities as the mass transit system in Austin grows. In addition, there is extreme attention to the architectural detail and to the quality. There is a third-party review board that oversees every architectural

element of the project. And these efforts have culminated in an award-winning plan and what we believe will be an award-winning project.

The commitment to affordable housing was clear from the community and the city, in that 25 percent of the families that call Mueller home, when it is complete, will be at affordable-level incomes.

You know, as we sit currently, as I said, we are well under way. It is home to the Dell Children's Hospital, which is a regional hospital that just opened, serving 47 counties. It's home to the University of Texas academic health campus. Our first homes are under construction as we speak. Apartments and retail are moving forward. So all the -- and the parks are under construction, so it is becoming a reality.

One of the key aspects is -- again, on the affordable side, is some of the tax credit projects that were anticipated to happen in the projects, specifically you know, oriented to just the tax credit projects. And these -- from my understanding, there is certain elements of the rules that basically put Miller at a disadvantage, a pretty severe disadvantage because of the nature of the project from the start, relative to competing for these.

So with that, I was just going to conclude my

remarks. And again, let the others with our group that will pick up from there. So thank you very much.

MS. HULL: Next is Scott Marks.

MR. MARKS: My name is Scott Marks, and I am with the law firm of Coats Rose. And Matt just did a great job of summarizing the development concept at Mueller Airport. And what I would like to do is to talk about the details of the QAP and the reasons we think that Mueller will not score well in the QAP as it is currently drafted, and talk with you about some very specific changes that we recommend.

One of the reasons that Mueller is severely disadvantaged is, of course, the exurban points. And it's very likely that because of the seven points for exurban location, that the infill nature of this property and really, very close to downtown, the Central Austin location of it, will put it at a disadvantage. And so we have six changes that we would recommend to the QAP.

The first is in the definition section. Adaptive reuse is used throughout the QAP, but there is no definition in the QAP as drafted. And so that term should be defined, and the definition we recommend is the transformation of an existing nonresidential development; e.g., school, warehouse, airport, into a residential

development. And we think that that definition captures the concept of adaptive reuse. It is transforming a use that has been nonresidential in the past into a residential use.

A structure, which was some of the testimony you heard earlier, shouldn't, I think, be part of the definition, because you have to define structure. A runway, for example, that costs millions of dollars to demolish, environmental cleanup, infrastructure costs, that are required at an airport are exactly the types of costs involved in transforming a nonresidential location or a nonresidential development into a residential development. So that is for a definition we would propose for adaptive reuse.

The second proposed revision to the QAP is the cost of the development by square foot. And that is a big-point item. For a senior development, which would be the first, hopefully 9 percent tax credit development at Mueller, the cost per square foot is $85. And it's -- the parking becomes the big problem when the cost per square foot is $85 in Austin, because, again, this is supposed to be pedestrian friendly, walkable.

And so the design concepts, which are consistent with a new organism philosophy, are that we

don’t want huge parking lots separating the housing from the street; that is not walkable. We don’t want -- at Mueller, Catellus doesn’t want to build the sort of suburban sprawling development. They want a very compact type of development.

And to do that, you have to pay a lot of money for parking. And so in my letter, I have given you some cost estimates. A structured parking garage costs $12,000 per space. An underground parking garage costs $20,000 per space.

So we are talking about millions of dollars for parking, and that shouldn’t be included in the formula for costs per square foot of net rentable area. The square footage of net rentable area doesn’t include parking space, and the costs associated with a structured parking garage should not be included in the $85 per square foot.

So our suggested revision is that this calculation does not include indirect construction costs, or structured parking garages, including podium and underground designs, if the costs associated with the structured parking garage are not included in eligible basis.

And what we are proposing there is that the developer cannot claim tax credits for the parking

structure, but in exchange, they shouldn't be penalized and not get these points for making their development pedestrian friendly.

The third change that we propose for the QAP is the rehab points. And I think this was just an oversight, because the title of the point category is rehabilitation or adaptive reuse, but then adaptive reuse wasn't included in the description of what counts for the points. So we would like for that to be added to scoring item number eleven.

Then development includes the use of existing housing as part of a community revitalization plan. Again, we would propose that adaptive reuse can just as effectively serve to promote a community revitalization plan as rehabilitation. And so we suggest the revision, The development includes the use of existing housing or adaptive reuse as part of a community revitalization plan.

In the economic development initiatives, there is a zone that is permitted under the Texas statutes of a designated tax increment reinvestment zone that is exactly like the economic development zones, the empowerment zone, the enterprise community zones that you have in the QAP.

And we would like to propose that we add to the economic development initiatives that would qualify for

that point designated tax increment reinvestment zone pursuant to Chapter 311 of the Texas Tax Code.

And then finally, in site characteristics this year, for the first time, there is a deduction of one point if you are located in a flight path. And it might be kind of ironic that we are pointing this out, but Mueller Airport is no longer the airport in Austin, as we all know. Bergstrom is.

Bergstrom is ten miles away, and flight path is a really undefined term. Flight path maps aren't commonly available. And so if you are ten miles from Bergstrom, any noise from a plane that might go overhead is negligible and really should not be a reason to deduct a point for a site. Those are our proposed revisions. Thank you.

MS. HULL: Jim Walker?

MR. WALKER: Hello. Thanks for the opportunity. My name is Jim Walker. I am a neighbor of the Mueller Airport redevelopment. The vision for the Mueller Airport has been 20-plus years in the making. I have only been involved for twelve years, but throughout the course of that time, affordability at Mueller has been a key tenet, a key principal.

Matt mentioned the 25 percent affordable goal

there, which is in the ownership as well as the rental. It applies to both sides of that equation. I can't stress enough -- and I have been kind of hovering on the outside of housing issues, but to have a neighborhood group that is supporting deep affordability, even pushing past with the initial success of Mueller on the residential, pushing for deeper and broader affordability than just the 25 percent, is a huge benefit to this project on a lot of different fronts.

In the course of bringing the Mueller vision to paper, you know, making it line up with regulations and requirements and all that, over the years, we have had to -- there has been a lot of adaptation of code, whether it is zoning, whether it is parking, street widths, the whole nine yards. And I would see this as in line with that. And to have a very successful, award-winning vision, as should come to pass, you need to try to adapt the rules to support that.

In that though, we have never supported Mueller being -- having rules adapted to it as an exclusion or as an anomaly. The rules should be adapted such that, as Mueller has happened, it could happen again; it could be replicated.

And so I think the rules as proposed -- I am

not going to pretend to be an affordable housing expert, but the rules as proposed looked like they are reasonable, to me, to enable the community's vision for Mueller, the surrounding neighborhoods' vision for Mueller, vis-a-vis affordable housing, to come to pass. So I would encourage support of the proposals. Thanks.

MS. HULL: Frank Fernandez.

MR. FERNANDEZ: I have a written statement. I will just hit some of the highlights and give that to you.

My name is Frank Fernandez. I am Executive Director for Community Partnership for the Homeless, and we are a nonprofit organization whose mission is to help end homelessness, providing safe, secure housing and access to support services.

We are basically a nonprofit developer that is focused on supportive housing. And what I wanted to briefly testify today was on some of the issues that would impact developers of supportive housing in Texas as it relates to the QAP.

A couple -- there is three specific recommendations that we are interested in and I think other supportive housing providers in this state are interested in.

One relates to broadening the category of the

at-risk set-aside category to include Section 8 rehab, SRO program in that definition. A second would be to -- I think it was alluded to in some of the earlier comments, making an exception to the current credit allocation cap for permanent supportive housing as it was mentioned.

The cap, I think gets you to 1.2 million, and for those who were familiar with supportive housing, it is -- because of the population we are trying to serve, it is very capital intensive in terms of operation of services. So most of our projects we pretty much have to make almost debt free; as you all know, there is not a ton of resources. So if it is possible to get an exception for in terms of that cap, or an increased level form permanent supportive housing that are consistent with their areas' ten-year plan to end homelessness, it is something that our organization and others in this state I think would be very supportive of and would advocate for.

And along the same lines, a third recommendation we would ask folks to consider would be when looking at -- trying to promote mixed income development, it has gone from 18 points to 22 points in terms of some of the allocation. Currently it calls for a set-aside of 5 percent below 30 percent of AMI. And we would urge you to consider increasing that to ten percent,

because again, getting folks to serve that lowest, that hardest-to-serve population is difficult, and if you can incent that into the process, we get that much farther into trying to achieve our respective ten-year plans to end chronic homelessness in all the communities across Texas.

So I give them more detail in here, and I will make a very brief note, since all the Mueller folks have been talking -- I don’t work with any of them, but I actually am moving there next year, so I have a personal interest in that.

And I do think, speaking more broadly, because I can’t speak to all the particulars that they did, but as someone who is involved in affordable housing and concerned about mixed-income development, I think, as Jim was saying, anything we can do in terms that's consistent for the community and for the state to promote mixed income is a good thing. Mueller in many ways, I think, is a social experiment.

And if those of us who are in affordable housing want to see deconcentration of poverty, because that is one of, I think, the primary things we are trying to do, making a development like Mueller possible, making it so that they can include a senior housing or housing

that serves folks who are lower than, say, 80 percent of median family income, that is an important and great thing. So if you guys can make -- adjust the QAP to allow for that, not only here in Austin but in other communities, I think that is something that should happen. Thank you.

MS. HULL: Thank you. Frances Ferguson?

MS. FERGUSON: My name is Francie Ferguson. I am here in two capacities. One is that I have been the affordable housing consultant to Catellus, and the other is that I have been working as a volunteer advocate for mixed-income development in Austin for years, and first as the founder of Foundation communities, and more recently as volunteer of the Board of Housing Works.

And our goal, with the recommendations we have made, with regards to the ones that Mueller has represented, is not to get a huge point advantage for Mueller. Right now they are at a huge point disadvantage.

So basically if somebody is walking in trying to do senior housing or trying to do -- particularly senior housing, because of the cost-element factor that Scott pointed out, that once you put parking in, you now can’t do dense senior housing.

And so it seems to me that this doesn’t just

benefit Mueller; this benefits any city that is trying to get a higher-density senior-housing facility built using tax credits, so that by taking the parking out of basis, there is not a goal to try to get any more credits than any other senior project would get on a per-unit basis.

But it is to be able to compete with what would otherwise exclude those projects, because once you put the parking in, there is just no way to build the product at $85.

So these recommendations are designed to allow the projects that come into Mueller to simply compete on a level playing field with other projects that might be coming in in the Austin area and over the region. And in many of them, we think would also benefit other kinds of urban redevelopment like this. And of course, until this time, this development wasn't ready to be developed, and therefore it wasn't appropriate to come forward and start commenting on a QAP for something that wasn't going to be relevant.

But now it is relevant. So that seems to be an appropriate time to start bringing these comments forward. The QAP has obviously been a living, breathing document over the years, and so a fairly groundbreaking opportunity like this, then, deserves comment.

I also want to point out that it is a high opportunity area. The average sales prices of the market-rate homes are in the 300- to $350,000 range, with homes ranging up to 600,000. The affordable homes are coming in at 120- to 160-. Half of the project will be home ownership, of about 4,800 units, so 2,400 home ownership units, and another 2,400 rental units.

Twenty-five percent of those will be under 60 percent of median, which means that 75 percent will be at market. So there is going to be a brand-new school, tons of new employment. It will truly be a high-opportunity area.

So just as we wanted exurbs to be a good place to put affordable housing, not just one more low-income area, this will not be a low-income area; this will be a moderate- to high-income area. So it is a high-opportunity area with a brand-new school. And so it is consistent with the kinds of places that we would advocate to have affordable housing put.

And so it then becomes important to look at whether or not our scoring has simply, you know, inadvertently made it impossible to score. So that was the intent behind these scores, is to simply get a level playing field, so that if a project came in here, it could

compete effectively with projects someplace else and not be penalized for being in an economic zone that is called a TIRZ and not a whatever else it is allowed to be called, or having structured parking.

And so the things we looked for were places that seemed to be consistent with what was happening here, but where a project like this could not gain any points and therefore couldn't compete. So the goal is a level playing field so that this housing could be located in such a high-opportunity area and so that senior housing doesn't have to all be garden apartments; it could also be more appropriate for living settings all over Texas.

Thank you.

MS. HULL: Thank you. Would anybody else like to comment on the QAP?

(No response.)

MS. HULL: The next topic open for public comment are the Multifamily Bond Program Rules. This document establishes the 2008 rules for the Multifamily Bond Program. The program issues tax exempt and taxable bonds to fund loans to nonprofit and for profit developers. Is there any comment on the bond rules?

(No response.)

MS. HULL: The TDHCA HOME program rules.

MS. CHAPA: Again, my name is Veronica Chapa and I am with the HOME Division. As you know, this year, the HOME Division has significantly updated the TDHCA HOME program rules; primarily the restructuring for the OCC program, defining the loan process and general administration. We welcome any comments regarding the rules of the HOME program in general at this time.

MS. HULL: First we have Sarah Mills.

MS. MILLS: Hi. My name is Sarah Mills, and I am a policy specialist in housing for Advocacy Incorporated. I am also member of the disability advisory workgroup and was part of the HOME advisory task force. I am here to comment on the HOME rules.

And specifically in the definition section 53.2, number 72, I know this was a change from the previous rules, the definition of a people with a disability. The previous definition is that of the Section 504 of the Rehabilitation Act. And my concern is that in the new definition, it says that persons with disabilities means a household composed of one or more persons, at least one of whom is an adult who has a disability.

The problem with that is that the word "adult" is very limiting. There is no inclusion of a parent of a

child with a disability, and in the state of Texas there are many households where there are children with disabilities. And that can create financial hardship, and requires homes, whether it is single-family or multifamily, to need accommodations so that the child can also reside in the home.

Also, I reviewed HUD's website, and they used a Section 504 definition of person with a disability as a definition. I guess I am just suggesting that maybe the Department look at that. And I have already spoken with a couple of staff about it, and seeing if there is any way to reword that, so it is not just an adult, but maybe including anyone in the household. Thank you.

MS. HULL: Thank you. Robin Sisco?

MS. SISCO: Hi. I am Robin Sisco, and I am with Langford Community Management Services. I represent myself and Judy Langford. We were two members of the HOME Advisory Task Force and were also consultants who represent several HOME contract administrators under the OCC program.

Prior to 2006, HOME contracts were 24 months followed by a 60 day grace period to submit final paperwork and draws. In 2006, the contract period was shortened to 18 months, followed by a 60-day grace period.

This was counterintuitive at the time, because changes were made where much additional work had been added to the implementation process by changing the HOME OCC program from a grant program to a loan program.

The HOME task force recommended a return to the 24-month contract length plus the 60-day grace period. However, the 2008 proposed rules set a 22-month contract length, which is really only a 20-month contract length because of a benchmark requiring that work be completed at 20 months.

Essentially, the 60-day grace period has been incorporated into the contract term itself. Regardless, neither 18 months nor 20 months is a realistic contract term, especially considering the additional challenges that have been brought on by the change of the program from a grant to a loan program. So we ask that the Board consider changing the rules to reflect the HOME task force recommendation and change the proposed rules to reflect a 24 month contract term that is more realistic and appropriate for the actual time required to implement a HOME project.

In 2006, benchmarks were set at six months and twelve months. These benchmarks were not realistic reflections of the implementation flow of a HOME contract.

The HOME task force -- because benchmarks that were taken together with the recommendation of a 24-month contract lien would allow the Agency to track appropriate progress on a contract and would more accurately reflect the time and effort required to manage a HOME contract.

However, the 2008 proposed rules include benchmarks that do not take into consideration the task force recommendations. We ask that the Board act to change the specifics, to change the proposed rules to reflect the recommendations of the HOME task force. And those specifics are included in my written comments that I will give you.

Changes to the 2006 HOME program, including shortened timelines and contract terms, ensure that many HOME contracts will require contract extensions. Extensions and other major changes to contract provisions require a contract amendment. If more than one amendment is requested, the Board approval is required.

The 2008 proposed rules state that a failure to meet any benchmark will now require a contract amendment. We ask the Board to replace the contract amendment policy regarding benchmarks with the policy recommended by the HOME task force in dealing with failure to meet benchmarks. And those specifics are also included in my

written comments.

For several years, prior to 2006, assistance under the program was made in the form of a grant to all eligible homeowners at the 80 percent of area median family income. In 2006 the program was changed to require assistance to homeowners at or below 50 percent of AMFI be made in the form of a five-year deferred forgivable loan, instead.

Assistance to those homeowners 51 to 80 percent AMFI is now made in the form of a zero-interest 30-year repayable loan. The HOME task force recommended a return to the grant program for those at 30 percent or less AMFI, and those designated by Rider 4, which allows those at 50 percent or less to be assisted if they are at 30 percent or lower, in cases where counties' AMFI is lower than that of the state.

The task force also recommended returning the five-year forgivable loan program for those at 31 to 50 percent AMFI. Finally, under the recommendation, those at 51 to 80 percent would require an amortized direct loan with a monthly payment of principal and interest with a maximum rate of 2 percent per year.

The 2008 proposed rules ignored the task force recommendations maintaining a deferred forgivable loan

program for those at 30 percent AMFI or below and changing the repayable loan requirements to start at those at 31 percent and above.

This creates several concerns. Most important, these funds are used to assist very poor people. Any repayment is nearly impossible on their fixed incomes, where payment will take money already designated in their budgets for food and medicine. In addition, even the five-year forgivable loan scenario creates such additional paperwork that it is overwhelming for contract administrators to implement these programs, and for the homeowners themselves.

We asked the Board to adopt the HOME task force recommendations referenced earlier. Prior to 2006, soft costs were allowed at 12 percent of hard costs, and administrative costs were allowed at 4 percent of total contract costs. This remained the same for 2006.

But the new loan procedures introduced many more soft costs, like land surveys, appraisals, and title policies. Therefore, if the cost items were added, additional allowable soft costs did not increase, the direct effect was an actual decrease in the amount of soft costs allowed by the Department in 2006.

Now the 2008 proposed rules reflect further

decreases in soft costs, both directly, by reducing the percentage to 10 percent, and indirectly, by limiting the list of allowable soft costs, and capping those that are allowed. In addition, there is no mention at all in the proposed rules of a 4-percent allowance for administration.

The first problem with these limitations is that they were not discussed with the HOME task force at all. Proposed changes of this magnitude should have been presented as a topic of task force discussion. There certainly would have been appropriate comments and recommendations made concerning these limits, if the task force had been aware they were under consideration.

Secondly, this level of detail has previously been published in an implementation manual and not in the Texas Administrative Code Section 10. The delineation of soft costs and caps is not an appropriate level of detail for Section 10 and should be reserved for the implementation manual so that it can be easily revised by the Agency as necessary.

The more important problem is that categories for soft and administrative costs are not at all comprehensive but are presented as if they are. For instance, land surveys are not listed, yet they are

considerable soft-cost expense, costing 800 to $1,400 per home in most cases. Also left out are title searches, title commitments and loan closings, usually around 6- to $700 per home; homeowner insurance, 3- to $500; and flood insurance, 4- to $700 dollars, even though all these things are required by the Agency.

It has been suggested verbally by Agency staff that this list is not meant to be comprehensive but rather that things not on the list may count as soft costs and are assumed not to have a cap. This is not made clear in the proposed rules, and if this level of detail is to go into 10 TAC, then it should be made clear that the rule -- in the rule that other uncapped soft costs will be allowed.

The actual caps that are delineated in the rules do not reflect a realistic awareness of the time, effort, and cost involved in implementing a HOME OCC program. In many places, the capped cost is hardly enough to cover the cost of materials and copying of the files, much less the travel and time involved and the many tasks associated with a particular soft-cost item.

Finally, there is a problem of limiting payment for progress inspections to a maximum of four, with suggested logical points of inspection being foundation,

framing, rough-in and substantial completion. Normally, we do ten or more inspections on these homes throughout the building process to ensure quality.

Many important steps take place between rough-in and substantial completion, including insulation, sheetrock, cabinetry, roofing, HVAC installation, installation of fixtures, et cetera. It is logical that more inspections are better than fewer when it comes to the quality expected.

These limitations on soft costs and administrative costs will not only seriously compromise the quality of the homes that can be built under this program, these limitations will make the program very difficult or even impossible to implement. This is especially so, considering the challenges presented by the new loan program. All cities and counties, those that use consultants and those that do not, will be hurt by these changes; some will no longer be able to afford to implement HOME OCC, especially those communities that are the poorest.

And this is particularly disturbing because the HOME OCC program is truly one of the best-targeted housing programs serving rural Texas right now. We ask that the Board leave the soft costs and the administrative costs at

their current levels of 12 percent and 4 percent. In addition, we ask the Board to consider putting soft costs and administrative costs limitation and cap information in the implementation manual instead of in 10 TAC.

If left intact, we would request the addition of a statement clearly explaining that there are other costs allowable and not capped. And finally, we ask that the list of caps, if not eliminated, be changed to reflect a realistic and comprehensive list of the tasks and costs associated with managing a HOME OCC program contract.

These comments reflect my personal comments and specific recommendations of the HOME Advisory Task Force and comments that we have received from contract administrators in the HOME OCC program. And I would just urge the TDHCA Board to carefully consider these recommendations. Thank you.

MS. HULL: Thank you. Any other comments on the HOME program rules?

(Pause.)

MS. HULL: Have you completed a witness affirmation form?

MR. HUNTER: I have. I will bring it up.

MS. HULL: Thank you.

MR. HUNTER: Hi, my name is Michael Hunter. I

am with Hunter and Hunter Consultants, and we have focused primarily on homebuyer assistance programs. And I am representing several clients here in that area. And we also do some owner-occupied, and I have a couple of issues with the owner-occupied. I am not going to repeat what you just heard, because I am in agreement with it. Okay.

I just do want to state that on the last speaker, however, there is one item under owner-occupied which I find to be a little strange, the way it was put in at soft costs. And that is for manufactured housing, and soft costs are capped at 5 percent. And if you run the numbers that's listed on the chart into the document that was presented, you can’t pay for the soft costs at 5 percent.

The manufactured housing generally comes in less expensive than stick-built housing; a 1,280-square-foot house we are doing now, manufactured housing, totally complete out, hard costs would cost about $43,000, $44,000 maximum. At 5 percent, that is $2,200.

If you take the two appraisals, the inspections, you have already blown out over $2,200 and you haven’t done any of the preconstruction conferences or anything of that nature; there is nothing there to pay for

it.

My recommendation would be -- is to move it back -- if you are going to keep it at 10 percent, move it back to 10 percent, and let the fact that those houses are coming in less expensively affect the actual costs that are being presented in soft costs, because that will work out. But at 5 percent, you are basically taking manufactured housing out of the arena, because they are not going to be able to pay for those soft costs.

I also concur with the last speaker, in that there is a lot of things on this chart that are not -- there are a lot of things that are soft costs that are not included in this chart.

And our experience is that on owner-occupied, the title work is running close to 12- t0 $1300 to close and all the title commitments. Our surveys are running right around $1500 apiece in Jasper County. That is the hurricane relief. And our appraisals are running right at $1,000 right now.

So I think in general on the soft costs, it appears that we are talking about a project related to soft costs that maybe the numbers weren’t researched well enough as what's actually out there on the ground.

And speaking of soft costs in general, I think

some clarifications need to be made to your charts and to your document. I had several clients call me, very confused about it.

I will give you an example. They were saying, we don’t know if the soft costs that are listed -- the maximum amounts are by project, activity or by contract.

And in talking with our staff, they say, whether by project or activity; however, I don't think they all are. For example, if you take procurement of a professional service provider and you have ten projects in your contract and it is 300 each, I am sure you are not expecting the client to spend $3,000 to procure a professional consultant to do that. I think you are looking at $300, which would be about right.

So I think to assist people who are reading this document, if there is an item in here which is more contract based than it is project based, we ought to asterisk that and mention it: This is a contract-wide fee, and that is all you can charge.

In the Section 53.32(e), which is on page 19 of your document, for downpayment closing costs only, it states that for homebuyer assistance that it is $10,000, but if it is a disabled person, then it is $15,000, whichever is less.

I am a little confused by that, because on homebuyer assistance, when you are doing down payment closing costs, that is a mathematical formula. All you are doing is trying to figure out how much money it takes to be able to get the down payment and the closing costs down to where the people can afford the note.

So it has nothing to do with their physical ability; it has to do only with what you have got to do the contract to do. I would suggest that whatever that is, it be the same. If it is $15,000, fine -- maximum. If it is 10,000, fine.

But I think to say, because you have a disabled family member, that they should have more money for down payment assistance, it doesn't make any sense. Now, to have more money to change the house to make it more accessible for them, that is fine. And you have it in there for $25,000. And that is fine; that covers that. So I think that is a little strange.

I am also in agreement on the owner-occupied, that when dealing with people below 30 percent of median income, especially in rural Texas and, more particularly, in areas of natural disaster, that you are talking about having to give them a grant, or they are not going to be able, flat out, to do the deal. And if you are talking

from 31 to 50 percent, going on a forgivable loan, we lost people in the last round because they went just slightly over 50 percent and they went to the forgivable loan, and they could not do that. They could not pay the payback; they could not make the payment.

And I think one of the things that we need to remember as we go through this process is that in rural Texas, when you are talking about 30 percent, 50 percent, 60 percent of median income, you are talking about countywide.

In a lot of rural Texas, that is a low number, and we are still having to figure out ways that they have to pay for all their expenses, housing being one of them, as mentioned before; food and medicine being the other.

We have one family that basically has two people on Social Security. The total amount of income is $1,200. They have to make a full payback of the loan to reconstruct their house, and there is no way they can do that, when you figure out all their expenses.

So I think we have to also consider that rural Texans are a little bit more poor than the urban areas and the exurban areas, and we need to maybe make an accounting for that as well. And we will be providing written comments later. Thank you.

MS. HULL: Thank you. Anybody else like to comment on the HOME program rules?

(No response.)

MS. HULL: The next topic up for public comment are the Housing Trust Fund program rules.

MS. CHAPA: Again, Veronica Chapa, also from the Housing Trust Fund program. Regarding the Housing Trust Fund program rules, this document establishes the 2008 rules for the Housing Trust Fund, which is the only state funded housing program.

It is available statewide and currently finances $3 million per year for the Texas Bootstrap loan program for low income families. The proposed changes maintain the flexibility of the program and streamlines the processes to ensure the policies are consistent with other Department of Housing programs. Are there any comments on the Housing Trust Fund program rules at this time?

(No response.)

MS. HULL: Next is the Texas First-Time Homebuyer program rules. This program utilizes funding from tax-exempt and taxable mortgage revenue bonds. It offers 30-year fixed-rate mortgage financing at below-market rates for very-low-, low- and moderate-income

residents purchasing their first home, or residents who have not owned a home within the preceding three years.

Qualified applicants access funds by contacting any participating lender, which is then responsible for the loan application process and subsequent loan approval. Any comments on the first-time homebuyer rules?

(No response.)

MS. HULL: Compliance monitoring, accessibility requirements and administrative penalties rules. This document establishes the policies and procedures related to TDHCA's monitoring of multifamily developments financed through the Department. Amy Young.

(No response.)

MS. HULL: Sarah Anderson.

MS. ANDERSON: Again, Sarah Anderson, S. Anderson Consulting. I just have one comment related to the compliance rules, and it has to do with benchmark that was added this last year related to substantial construction. And it specifically has to do with a mention of 80 percent of the framing has to be done to complement the 10 percent of the spending, and 80 percent of framing frankly is almost completely done.

And I think it is a benchmark you are going to find is very difficult to meet this year. I know it is

new. I think you are going to find a lot of us are not going to meet that. I don't have a suggestion right now on what is better than 80 percent.

I just know that 80 percent is a problem, at least on our side. So I would like to see some sort of review of a different benchmark that does reflect that somebody has reached their substantial construction but is a little bit less difficult to meet. Thanks.

MS. HULL: The TDHCA underwriting micro-analysis, appraisal, environmental site assessment. Property condition assessment and reserve for replacement rules and guidelines. This document outlines the rules and guidelines related to TDHCA's evaluation of opposed affordable housing developments, financial feasibility and economic viability. Sarah Anderson.

MS. ANDERSON: Okay. Sarah Anderson, S. Anderson Consulting. Two comments related to the REA rules right now.

One specifically is asking for some clarification related to the concentration rate. The rule states that the underwriter will independently verify the number of rental units and multifamily buildings based on the most recent census data, the completion of Department funded or -- and this is where we have issues with --

other known rental developments in the area. It makes me really nervous. I don't know what that means.

And if the REA could please define where that information of other known rental developments are and where our market analysts can find them so that we were -- the capture rates are being -- determine that our analysts actually have the same information so they can come up with the correct capture rate analysis.

Also, this last year there were some issues related to market area and what was considered appropriate market area and not and whether or not properties or the lines and boundaries that were drawn by the market analysts were trying to beat -- were gerrymandered.

And what I would like to suggest is -- this would be a completely voluntary on the part of an applicant, but at the preapplication stage, if we could submit preliminary suggestion with a market area that our analyst is going to look at and get some sort of comment from the real estate analysis group as to whether that would be considered appropriate and includes the properties that they would want to be seen. And they are willing to be a binding item.

But again, what we are finding is that our analysts are drawing lines. The market studies are being

submitted and we are being told that there is a potential gerrymandering issue that we don't think is there, but the Department may. So if we could get some assistance when our analysts are determining the market areas, and finding out whether or not could you move this half a mile this direction or this is not considered appropriate by Department standards.

We think we would rather know before the market analyst has moved forward with that than after it has been submitted and there is nothing that can be done. So again, I would want to be voluntary and nonbinding but just asking for a little bit of openness in the way that the Department will be looking at these things.

MS. HULL: Thank you. Any other comments on the REA rules?

(No response.)

MS. HULL: The Legal Services Division rules; the following rules have been reviewed by the TDHCA Legal Services Division and are being presented for public comment, including the providing of current contact information to the Department to the asset resolution enforcement rules.

Any comment on this item? Would anybody like to provide any other public comment at this time?

(No response.)

MS. HULL: If nobody else would like to provide public comment, I am going to go ahead and close the meeting. Thank you for coming.

(Whereupon, at 7:07 p.m., the public hearing was concluded.)

C E R T I F I C A T E

IN RE: State of Texas Consolidated Public Hearing

LOCATION: Austin, Texas

DATE: October 4, 2007

I do hereby certify that the foregoing pages, numbers 1 through 52, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Stacey Harris before the Texas Department of Housing and Community Affairs.

10/10/2007
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2007 STATE OF TEXAS
CONSOLIDATED PUBLIC HEARING

Courtroom/Council Chambers
U.S. Post Office
1001 E. Elizabeth Street
Brownsville, Texas

Wednesday,
October 3, 2007
10:58 a.m.

PRESIDING: JODI CONTRERAS, TDHCA

ALSO PRESENT:

MICHAEL GERBER, Executive Director, TDHCA
MIKE KU, ORCA

ON THE RECORD REPORTING
(512) 450-0342

A G E N D A

P R O C E E D I N G S

MS. CONTRERAS: I am Jodi Contreras, with the Texas Department of Housing and Community Affairs. Welcome to the 2007 State of Texas Consolidated Public Hearing in Brownsville.

These hearings are an opportunity to comment on a significant portion of the Texas Department of Housing and Community Affairs, Office of Rural and Community Affairs, and Texas Department of State Health Services annual policy, rule, and planning documents.

If you have not already done so, please take this opportunity to silence any communication devices.

For anyone interested in speaking, we need you to fill out a witness affirmation form and note the topic you wish to discuss. If you haven't already completed one, they're located on the table in the back. Also, if you speak, please provide your name and who you represent. As a reminder, we are here to accept public comment and will not be able to respond to questions about the rules or documents.

The comment period is September 10 through October 10 for all documents with the exception of the TDHCA HOME program rule, and the accessibility requirements rule. The public comment period for the

TDHCA HOME program rule and accessibility requirements rule is September 24 through October 29.

Written comment is encouraged, and may be provided at any time during the public comment period. Send comments on the rules by e-mail to 2008rulecomments@tdhca.state.tx.us or by mail to TDHCA, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941.

Any written comments on the one-year action plan, regional allocation formula, and affordable housing needs scores should be sent to brenda.hall@tdhca.state.tx.us or by mail to Brenda Hull, TDHCA, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to 512-469-9606.

Planning documents, the 2007 State of Texas Consolidated Plan One-Year Action Plan. TDHCA, ORCA, and the Department of State Health Services prepare the 2008 State of Texas Consolidated Plan One Year Action Plan according to the U.S. Department of Housing and Urban Development's reporting guidelines.

This plan reports on intended use of funds received by the State of Texas from the U.S. Department of Housing and Urban Development for program year 2008, which begins on February 1, 2008 and ends on January 31, 2009.

The plan illustrates the state's strategies in addressing the priority needs and specific goals and objectives identified in the 2005 to 2009 State of Texas Consolidated Plan.

The plan covers the state administration of the Community Development Block Grant program, Emergency Shelter Grants program, the HOME Investment Partnerships program, and the Housing Opportunities for Persons with Aids program.

The Community Development Block Grant program, we have Mike Ku with ORCA.

MR. KU: I'm Mike Ku from the Office of Rural Community Affairs, ORCA. Because the 2008 is the second year of a two-year biennium selection process for the Community Development funds, and the Community Development supplemental funds, and the Colonia Construction funds, no changes were made to these, or other smaller biennium funded categories.

However, for Microenterprise Loan funds, ORCA proposes a few adjustments to the scoring factors, and on a semi-annual competition basis. For the Small Business Loan fund, ORCA proposes a few adjustments to the scoring factors.

For STEP programs ORCA proposes a few

refinements to the scoring factors. And for the Renewable Energy Demonstration pilot program, ORCA proposed a Renewable Energy pilot program funded the deobligated funds and other program incomes. The funds will be $500,00 in deobligated funds program incomes will be available initially with a maximum award of $500,000 and a minimum of $50,000.

The selection factor for the program is based on type of projects, is 15 points; innovative technology methods will be 10 points; duplication in other rural areas will be 10 points; long term costs, benefits and Texas renewable energy goals will be 10 points; partnership collaboration will be 10 points; and location in rural areas will be worth 5 points.

MS. CONTRERAS: Are there any comments on this?

(No response.)

MS. CONTRERAS: Okay. The HOME Investment Partnerships program. The HOME Investment Partnerships program, referred to as the HOME program, awards funding to various entities for the purpose of providing safe, decent, affordable housing across the state of Texas. To provide this kind of support to communities, HUD awards an annual allocation of approximately $41 million to TDHCA.

Under the HOME program, TDHCA awards funds to

applicants for the administration of the following activities: Homebuyer Assistance program provides down payment and closing cost assistance up to $10,000 for eligible households.

The Contract-for-Deed Conversion program, which falls under the Homebuyer Assistance activity, provides funds to convert single-family contract-for-deed into a warranty deed, and also provides funds for the rehabilitation or reconstruction of the unit. Two million is set aside each year for the HOME program annual allocation.

Owner Occupied Housing Assistance program funds to eligible homeowners for the rehabilitation or reconstruction of single-family11 homes. The Tenant Based Rental Assistance provides rental subsidies which may include security deposits to eligible tenants for a period of up to 24 months.

The Rental Housing Development programs provides funds to build, acquire, and/or rehabilitate affordable multifamily housing. This activity also includes the Community Housing Development Organization set aside, which is 15 percent of the total HOME allocation.

Are there any comments on the HOME action plan?

MS. CONTRERAS: The Housing Opportunities for Persons with Aids program. The Texas Department of State Health Services addresses the housing needs of people with HIV and Aids through the HOPWA program, which provides energy -- emergency housing assistance in the form of short term rent, mortgage, and utility payments to prevent homelessness.

Tenant Based Rental Assistance, which enables low income individuals to pay rent and utilities until there is no longer a need or until they're able to secure other housing; supportive Service, which provides case management, basic telephone assistance, and smoke detectors; and permanent housing placement, which allows assistance for reasonable security deposits, related application fees, and credit checks.

If you have any questions regarding HOPWA, please contact DSHS at 512-533-3000.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Are there any other general comments on the consolidated plan?

(No response.)

MS. CONTRERAS: Hearing none, we will proceed to the next item.

The Regional Allocation Formula. TDHCA is legislatively required to use a formula to regionally allocate its HOME, Housing Tax Credit, and Housing Trust Fund program funding. The resulting formula objectively measures the affordable housing need and available resources in the 13 state services regions it uses for planning purposes.

Additionally, the formula allocates funding to rural and urban areas within each region. As a dynamic measure of need, the formula is updated annually to reflect the most current demographic and available resource information, responding to public comment on the formula, and include other factors as required to better assess regional affordable housing needs.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: The Affordable Housing Needs Score. The Affordable Housing Needs Score is the scoring criteria used to evaluate HOME, Housing Tax Credit, and Housing Trust Fund applications.

While not specifically legislated by the state, the score helps address other need based funding allocation requirements by responding to an IRS Section 42 requirement that the selection criteria used to award the

Housing Tax Credit funding must include housing needs characteristics, the State Auditor's Office and sunset findings that call for the use of objective need based criteria to award TDHCA's funding.

The score provides a comparative assessment of each place's level of need relative to the other places within the state service region. The score encourages applicants to request funding to serve communities that have a high level of need.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Hearing none, we'll proceed to the next item.

Housing program rules. The Housing Tax Credit Qualified Allocation Plan and Rule, this document establishes the 2008 rules for HTC program. The HTC program uses federal tax credits to finance the development of high quality rental housing for income eligible households and is available statewide.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Hearing none -- oh, sir? Ma'am?

MS. GARZA: Hi. My name is Lucy Garza. I'm

with the City of Brownsville Planning Department. And my question would be -- or statement would be on the Housing Tax Credits. When we do -- we've been doing multifamily projects, layer with HOME funds and TDHCA tax credits.

When a project is being qualified to be awarded -- to see how many points they're going to be awarded, and you receive a letter from the city, or the agency, and in this example it would be from the city, is a QAP analysis -- well, I would suggest that the QAP analysis be figured out first before considering the commitment from the city.

Do I -- I mean, did I make myself clear?

MR. GERBER: Ma'am, could you clarify that just a little bit more?

MS. GARZA: Oh. When awarding the tax credits, there's a gap analysis, and we had one instance where the gap analysis was figured out according -- based on the letter of commitment that was received from the city.

So we -- from our point of view, in order for us to spend our HOME funds more efficiently, we would like for TDHCA to consider making the gap first before putting that other component, which is the HOME funds, into the analysis for the gap.

MR. MEDINA: I may add too -- my name is Ben

Medina, I'm the Planning Committee Development Director for the City of Brownsville.

And what Ms. Garza is alluding to is that we're a city that is first engaging in tax credits using HOME dollars. We've had two of our first projects done, and we're really thankful for TDHCA of awarding those credits to the City of Brownsville.

But what we learned in this new business is that we lacked some tax credits on the table, your tax credits, and we utilized more HOME dollars, that we could have utilized locally for other projects. And that was done because when the application for -- by the developer was that he needed to score enough points, so we issued a letter of commitment for a certain amount of HOME dollars, city HOME dollars.

And you all took that HOME dollars and utilized that, and that discounting the credits to the developer. So that's what happened. And what we would like is that maybe it could be a better working relationship where we can -- when the applicant submits an application, that we say we know how much the maximum credit is, and then we develop the gap after that.

If the application could be changed to where the scoring is different, where the gap comes in second.

That's what we're trying to explain.

MR. GERBER: I appreciate that. And that clarifies. And what we'll do is we'll take your comment back and share that with the staff that work in those respective areas and then we'll report back to you with an answer from the Department.

But if afterwards you see me and give me your business cards --

MR. MEDINA: Yes, we will.

MR. GERBER: -- we'll try to get a response to you quickly. But thank you --

MS. GARZA: Thank you.

MR. GERBER: -- for those comments.

MS. CONTRERAS: Are there any other comments on this issue?

(No response.)

MS. CONTRERAS: Hearing none, we'll proceed to the next issue, Multifamily Bond program rules. This document establishes the 2008 rules for the multifamily bond program. This program issues tax exempt and taxable bonds to fund loans to non-profit and for-profit developers.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Hearing none, we proceed to the next item, the TDHCA HOME program rules. This year, the HOME Division has significantly updated the TDHCA HOME program rules and welcomes any comments regarding the rules and the HOME program in general.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Hearing none, we will proceed to the Housing Trust Fund program rules. This document establishes the 2008 rules for the Housing Trust Fund, which is the only state funded housing program.

It is available statewide and currently finances three million per year for the Texas Bootstrap Loan program for low income families. The proposed changes maintain the flexibility of the program, and streamlines processes to ensure policies are consistent with other Department programs.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Hearing none, we'll proceed to the Texas First Time Homebuyer program rules. The First Time Homebuyer program utilizes funding from tax exempt and taxable mortgage revenue bonds.

The program offers 30-year fixed-rate mortgage

financing at below rate for very low, low, and moderate income residents purchasing their first home or residence who have not owned a home within the preceding three years.

Qualified applicants access funds by contacting any particular lender which is then responsible for the loan application and subsequent loan approval.

Are there any comments on this item?

MR. GERBER: If I could just interject for those in our audience, as well as others who might be listening, that right now the First Time Homebuyer -- the rules are what we're considering here at this hearing, but the Department currently has $160 million in available First Time Homebuyer funds at very low interest rates of 5.75 percent for an unassisted mortgage, or for 6.50 if you require up to 5 percent down payment assistance. And those are well below market rates and are intended to get low income Texans who are ready to meet the challenge of home ownership, into their own home.

And we would welcome and encourage community leaders in this community and in South Texas generally to encourage additional lender participation and realtor participation so that we can up home ownership rates in this part of Texas, which unfortunately have been lagging

behind the state average.

But we would -- I just wanted to make folks aware that that $160 million is out, it's available now, an we hope more people in South Texas will take advantage of it.

MS. CONTRERAS: Are there any other comments?

(No response.)

MS. CONTRERAS: Hearing none, we'll proceed to the next item. Compliance Monitoring, Accessibility Requirements, and Administrative Penalty rules. This document establishes the policies and procedures related to TDHCA's monitoring of multifamily developments financed through the Department.

Are there any comments on this item?

MS. CUEVAS: Going back -- excuse me -- my name is Blanca Cuevas -- my name is Blanca Cuevas, and I'm with the City of Brownsville. Going back to the homeowners, I just have a question in reference to the assistance for the down payment for first time homebuyers.

Do you happen to have a listing of the lenders that are available?

MR. GERBER: We could sure provide that to you, and you can find that on our website, which is www.myfirsttexashome.com. But if you leave me card

afterwards, I'll be glad to make sure you get that information sent to you by e-mail today.

We do have a number of lenders I know that includes CDC Brownsville and a number of the larger banks that are here --

MS. CUEVAS: Well, is it --

MR. GERBER: -- in the region.

MS. CUEVAS: -- the same lenders -- I do have a listing, if it hasn't changed.

MR. GERBER: I don't believe that it's changed significantly. We'd like to have more lenders participate in the program, and, of course it's not just the individual lenders -- it's not just the lending institution, but it's also those branches as well.

MS. CUEVAS: Right.

MR. GERBER: And actually getting those mortgage bankers who are dealing with the community, who are dealing with the family that comes, getting them more engaged in the program and aware that it's available to assist that low income family.

MS. CUEVAS: All right.

MR. GERBER: We'd be glad to talk afterwards.

MS. CUEVAS: Thank you.

MR. GERBER: Sure.

MS. CUEVAS: All right.

MR. GERBER: Thanks for your interest in that.

MS. GARZA: Also, going back, those monies that are available that's down payment assistance --

MR. GERBER: Yes, ma'am.

MS. GARZA: -- and -- can those be combined with our city -- local HOME funds?

MR. GERBER: I believe it's for the purchase of a home. I don't believe that it's tied to other programs. If the city were to -- I would need to talk to the program staff on that. I don't know that -- if we were using state HOME funds the answer would be no, but if we were using -- if the city was using their HOME funds, I just don't have an answer for you. But I'll certainly get you one.

MS. GARZA: Okay. Because, yes, we do have a down payment assistance program here in the City of Brownsville, we're using HOME funds for that, and that's why I was interested in knowing whether --

MR. GERBER: Sure.

MS. GARZA: -- if a home buyer goes to one of those approved lenders, can they qualify for both.

MR. GERBER: And we have a down payment assistance through our HOME program as well. And these

are really, you know, different in the same programs. Let me get you sort of a listing of the differences of the program and which category of individual or family be best suited for which program.

MS. GARZA: Okay. And then just to I guess confirm. They can be used not only in the rural areas, but also here in the city?

MR. GERBER: HOME funds or down --

MS. GARZA: Those funds that you were talking about it.

MR. GERBER: The Texas First Time Homebuyer funds are available statewide. Any Texan, any part of the state they will use them.

MS. GARZA: Okay.

MR. GERBER: The only thing about them is that they're first come first served. So when the money runs out, then they're gone.

MR. BARRERA: Hello. Yes, I'm Frank Barrera from Brazos Affordable Homeownership. I wanted to ask, is that money just available for down payment assistance, or does it provide gap financing as well.

MR. GERBER: No, it's only for down payment assistance, and for --

MR. BARRERA: It's only for down payment,.

MR. GERBER: -- and it's -- of the 160 million that's available, 112 million is for unassisted loans, so that's at the 5.75 percent interest rate. If you need 5 percent assistance, you have to qualify and be at 60 percent of the area median income for -- I forget the family size, but there's an income limit at 60 percent for a specific family size, and that would allow a 5 percent down payment assistance to be provided, but it would be at the higher interest rate of 6-1/2.

MR. BARRERA: Okay. Can I get a list of the lenders as well?

MR. GERBER: Sure, I'll be glad to provide that to you.

MR. BARRERA: Because the lenders -- they'd be like, for instance, let's say the city gives either down payment assistance or we get like the gap financing from HOME. We would be able to tap in like through bond program with a lender. Right?

MR. GERBER: Again, it's really dependent on the structure of the homeownership opportunity being provided. You know, there are different, certainly, intersections with the program.

MR. BARRERA: If I could get a list of those then.

MR. GERBER: Sure, I'll be glad to provide and give that to you.

MR. BARRERA: Thank you.

MR. GERBER: Thank you. Thanks for you interest.

MS. CONTRERAS: Are there any other comments?

(No response.)

MS. CONTRERAS: TDHCA Underwriting Market Analysis, Appraisal, Environmental Site Assessments, Property Condition Assessments, and Reserve for Replacement Rules and Guidelines. This document outlines rules and guidelines related to TDHCA's evaluation of a proposed affordable housing development, financial feasibility, and economic viability.

Are there any comments on this item?

(No response.)

MS. CONTRERAS: Hearing none, we'll proceed to the Legal Services Division rules. The following proposed rules have been reviewed by the TDHCA Legal Services Division, and are being presented for public comment. Providing current contact information to the Department and assess resolution and enforcement rules.

Are there any comments on this item?

MR. GERBER: Let me also just add for the

community leaders here today. The Department has developed a set of enforcement rules that are, frankly, a gift to us from the Texas State Legislature in the form of the ability to impose administrative penalties on those property owner and managers who fail to live up to their commitments within our programs.

The Department will have the ability to assess penalties of up to $1,000 per day per violation on a property that is not being appropriately maintained and meeting the requirements of the program.

The last thing we want to have is developers or property owners or managers who are failing to live up to their commitments to low income Texans, and thank goodness there are not many properties in that category, and most developers and property managers and owners do what they're supposed to do.

But for those few that do not, we now have important enforcement tools that are being proposed in these new rules that will enable us, again, to impose significant fines of up $1,000 per day per violation. So those fines could get quite heavy.

So those members of the development community who might be listening should be warned that the Department is very much interested in working with

communities and community leadership where there are problem properties, to get them either in compliance, or get them out of our program.

MS. RODRIGUEZ: This may not be exactly what you're talking about, but I'm interested more about it. My name is Rosie Rodriguez, and I work for the Board of Fair Housing and Economic Justice. It's an organization -- it's FHIP; it's the only FHIP in the Valley, fair housing initiative program.

And we are the organization -- I believe we're the only organization in the Valley that is actually making sure that the Fair Housing Act is being enforced here. And since we've been here -- and the organization's only been here since March, it's an organization that's worked out of El Paso. I'm sure you -- I don't know if you've heard of Board of Housing out of El Paso.

But there are so many organization, contractors, builders, rental places, and people that receive funding, state funding and local funding, that are truly not complying with the law, and they're breaking the Fair Housing Act. And since the inception of the Board of Fair Housing here in the Valley, we've already filed one case, and we've got three others pending.

There is so much discrimination going on in the

Lower Rio Grande Valley because there's never been anyone regulating that. So I'm happy to hear that you are, you know, enforcing your laws, under your funding, and under you organization, because that would really make a difference here to make sure that people understand that whether your get funding, federal funding, state funding, or local funding, that you do have to comply with the law.

MR. GERBER: Thank you.

MS. CONTRERAS: Are there any other comments?

(No response.)

MS. CONTRERAS: Is there anyone else who would like to comment at all on this hearing today?

MR. MALDANADA: My name is Victor Maldanada, and I'm the homeless coordinator for the City of Brownsville. And I'd just like to thank you for the upcoming grant that we got for this new year. I believe it's about 183,000 for our -- some recipients which provide services and funding for the homeless and needy of this community.

MR. GERBER: Is this an Emergency Shelter grant that you received?

MR. MALDANADA: Yes.

MR. GERBER: Great.

MR. MALDANADA: Emergency Shelter --

MR. GERBER: Congratulations.

MR. MALDANADA: -- grant. Thank you.

MR. GERBER: It was a very competitive process, and I'm --

MR. MALDANADA: Yes, very competitive.

MR. GERBER: -- I'm confident you put together a great application. I always like to -- that's great.

MR. MALDANADA: Thank you.

MR. GERBER: Congratulations.

MR. MEDINA: Again, Ben Medina with the Planning Department. I also want to thank you for the ESG monies and we have been getting that for a number of years. But one thing that we do need in the Valley is an HMIS assistance. The HOME -- or, I mean, CDBG dollars is not enough. But we need to get all those agencies together. And the only way of doing that is through HMIS.

And I noticed HUD is pushing that, the state is pushing that, but we need some help down in the Valley to make maybe deobligated funds, or unobligated ESG funds available to the local communities to develop their HMIS assistance. So we would appreciate if you could take that back.

MR. GERBER: We'll take that back. It's a struggle because there's just so few dollars and there's

so much need statewide --

MR. MEDINA: Yes.

MR. GERBER: -- and so it's, in terms of putting it into services and putting it -- versus -- it's a hard resource allocation --

MR. MEDINA: Yes, but if --

MR. GERBER: -- so it's that --

MR. MEDINA: -- if you know, HMIS would help everybody, coordinate everybody and --

MR. GERBER: Sure.

MR. MEDINA: -- the limited dollars could probably go a little bit further.

MR. GERBER: Great.

MR. MEDINA: Thank you.

MR. MALDANADA: If I could add something, Ben, it's -- the reason why we worry about that is because I think next year we don't have an HMIS assistance. We're not going to be able to apply for the ESGP funding. I think that's one of the characteristics, or the qualifications is that we need to have an HMIS assistance.

MR. GERBER: Let me take that back as well. I appreciate knowing that, and --

MR. MALDANADA: Thank you.

MR. GERBER: -- we'll respond to that as a

public comment.

MS. CONTRERAS: Just a couple of housekeeping issues. For all of those that -- all of you who came in and didn't have a chance to sign in, if you could please sign in. And for those who did speak today, if you could at least fill out one of those witness sheets for me before you leave, that would be great. Thank you.

MR. GERBER: And we'd really like to thank the Mayor of Brownsville and the City Council and leadership here in Brownsville for making -- allowing us to make use of their chambers.

MS. CONTRERAS: And with that, this meeting is concluded.

(Whereupon, at 11:29 a.m., the meeting was concluded.)

C E R T I F I C A T E

IN RE: State of Texas Consolidated Public Hearing

LOCATION: Brownsville, Texas

DATE: October 3, 2007

I do hereby certify that the foregoing pages, numbers 1 through 28, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

10/5/2007
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2007 STATE OF TEXAS
CONSOLIDATED PUBLIC HEARING

Dallas Public Library
1515 Young Street
Dallas, Texas

October 1, 2007
10:30 a.m.

PRESIDING: BRENDA HULL

ALSO PRESENT:

WILLIAM GUDEMAN, ORCA
VERONICA CHAPA, TDHCA

ON THE RECORD REPORTING
(512) 450-0342

A G E N D A

P R O C E E D I N G S

MS. HULL: Good morning, everyone. Welcome to the 2007 State of Texas Consolidated Public Hearing in Dallas.

These hearings are an opportunity to comment on a significant portion of the Texas Department of Housing and Community Affairs, Office of Rural Community Affairs, and Texas Department of State Health Services Annual Policy, Rule and Planning documents. All documents under review are available on the TDHCA website.

If you haven't already done so, please silence any communication devices, and for anyone interested in speaking, you'll need to fill out a witness affirmation form and note the topic you wish to discuss. They are located over here on the front table.

Also as you speak, please provide your name and who you represent. As a reminder, we're here to accept public comment, and we will not be able to respond to any questions at this time.

The comment period is September 10 through October 10 for all documents, with the exception of the TDHCA HOME Program Rule and the Accessibilities Requirements Rule.

The public comment periods for the HOME Rule

and the Accessibility Requirements Rule is September 24 through October 29.

Written comment is encouraged, and may be provided at any time during the public comment period. You can send comments on the rules by e-mail to: 2008rulecomments@tdhca.state.tx.us or by mail to TDHCA, 2008 Rule Comments, PO Box 13941, Austin, Texas 78711-3941. You can also fax your comments to 512-475-3978.

The first document up for public comment that we're going to discuss this evening is the 2007 [sic] State of Texas Consolidated Plan One-Year Action Plan.

TDHCA, ORCA, and the Department of State Health Services, we've prepared the 2008 State of Texas Consolidated Plan One-Year Action Plan according to the U.S. Department of Housing and Urban Development's reporting guidelines.

The plan reports on the intended use of funds received from the State of Texas for Program Year 2008, which begins February 1, 2008 and ends January 31, 2009.

The plan illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2005 to 2009 State of Texas Consolidated Plan. The plan covers the State's administration of the Community Development Block Grant

Program, the Emergency Shelter Grants Program, the HOME Investment Partnership Program, and the Housing Opportunities for Persons with AIDS Program.

And from the Office of Rural Community Affairs, we have Will Gudeman.

MR. GUDEMAN: Good morning, my name is Will Gudeman, Office of Rural Community Affairs.

Because Fiscal Year 2008 is the second year of our two-year biennial selection process for the Community Development Fund, and the Community Development Supplemental Fund, these -- there will be no changes made to the '08 action plan.

However, for the Micro Enterprise Loan Fund, Small Business Loan Fund and the STEP program, there will be small changes in the scoring factors.

Also new will be -- is the Renewable Energy Demonstration Pilot Program, that proposes a renewable energy pilot program funded through de-obligated funds and program income; these will be a maximum award of $500,000 and a minimum award of $50,000.

The selection factors include the type of the project, 15 points, innovation technology or methods, duplication in the other rural areas, long-term cost benefit, and Texas -- Renewable Energy goals; partnership

and collaboration; leveraging; and location in rural areas.

MS. HULL: For the HOME Investment Partnership, we have Veronica Chapa.

MS. CHAPA: The HOME Investment Partnerships Program, referred to as the HOME program, awards funding to various entities for the purpose of providing safe, decent, and affordable housing across the State of Texas.

To provide this kind of support to communities, HUD awards an annual allocation of approximately $41 million to the TDHCA. Under the HOME program, TDHCA awards funds to applicants for the administration of:

Homebuyer Assistance Program, which provides down payment and closing cost assistance for up to $10,000 to eligible households;

Contract-for-Deed Conversion Program, which is categorized under the Homebuyer Assistance activity. This provides funding to convert single-family contract-for-deed into a warranty deed, and also provides funds for the rehabilitation or reconstruction of the unit; $2 million set aside each year from the HOME Program from the annual allocation;

Three, the Owner-Occupied Housing Assistance Program, provides funds to eligible homeowners for the

rehabilitation or the reconstruction of single-family homes;

Four is, the Tenant-Based Rental Assistance Program, which provides rental subsidies, which may include security deposits to eligible tenants for a period of up to 24 months;

And Five, Rental Housing Development Programs, which provides funds to build, acquire and/or rehabilitate affordable multifamily housing. This activity also includes the Community Housing Development Organization, or CHDO, set-aside, which is 15 percent of the total HOME allocation.

Are there any comments on the HOME Action Plan at this time?

(No response.)

MS. HULL: The Housing Opportunities for Persons with AIDS Program is administered by the Texas Department of State Health Services and addresses the housing needs of people with HIV-AIDS through the HOPWA program.

And it provides emergency housing assistance in the form of short-term rent, mortgage, and utility payments to prevent homelessness; tenant-based rental assistance; supportive services; basic telephone

assistance and smoke detectors; and permanent housing placement.

If you have any questions regarding the HOPWA Program you can contact DSHS at 512-533-3000.

Are there any comments on the Consolidated Plan, One-Year Action Plan?

(No response.)

MS. HULL: The next item up for public comment is the Regional Allocation Formula. TDHCA is legislatively required to provide a formula to regionally allocate its HOME, Housing Tax Credit, and Housing Trust Fund Program funding.

The resulting formula objectively measures the affordable housing need and available resources in the 13 state service regions. Additionally, the formula allocates funding to rural and urban areas within each region.

As a dynamic measure of need, the formula is updated annually.

Are there any comments on this, the Regional Allocation Formula?

(No response.)

MS. HULL: The Affordable Housing Need Score. It's a scoring criteria used to evaluate HOME, Housing Tax Credit and Housing Trust Fund applications.

While not specifically legislated by the State, the score helps address need-based funding allocation requirements. The score provides a comparative assessment of each place's level of need relative to the other places within the State Service Region.

The score encourages applicants to request funding to serve communities that have a high level of need.

Are there any comments on the Affordable Housing Needs Score?

(No response.)

MS. HULL: Next, we will go on to the Housing Program Rules. The Housing Tax Credit Qualified Allocation Plan and Rules establishes the 2008 rules for the HTC Program.

The HTC Program uses federal tax credits to finance the development of high-quality rental housing for income-eligible households, and it's available statewide.

Mr. Price? Please.

MR. PRICE: My name is Charlie Price. I'm a housing program manager for the City of Fort Worth, and I'm here on behalf of the Mayor and City Council members of the City of Fort Worth. Thanks for giving me this opportunity to give some comments about the QAP.

I'm here to address two issues here today, address two issues. First, changes in the QAP regarding point allocation for low-income housing tax credit applications. And second, possible alternative methods for allocating low-income housing tax credits involving mixed income applications, involving a majority of units being above the 60 percent of area median income.

Regarding the first issue, a majority of the new changes in the QAP are detrimental to the production of affordable housing in the City of Fort Worth, and it would be harmful to the citizens of Forth Worth, and particularly our city's low-income residents.

I would like to present some information to you about the nature and extent of our city's need for affordable housing. I'll tell you about these issues that the Fort Worth leaders believe are important for you to consider as you deliberate and when you change the QAP.

Fort Worth has a large number of households and needs. There are over 55,000 low-income house renters families in Fort Worth. At least 11,000 of these families are paying far in excess of reasonable costs for housing; 50 percent or more of their income.

Of Fort Worth's low-income renter households, at least 11 percent are elderly; 17 percent are disabled;

and 53 percent are members of minority populations.

This data is from 2000 census data and as you know, the City of Fort Worth's population has grown nearly 6 percent in the past five years. So we believe that the actual need for affordable housing -- rental housing is greater than this amount.

The persons that would be most affected by the limitations on construction of quality affordable rental housing are for the most part the vulnerable segments of our society: the disabled, the elderly, the minority families.

Data from the census also includes many of the housing units that might otherwise be affordable to families at lower incomes are occupied by households at higher incomes.

For example, there are approximately 12,000 rental housing units in Fort Worth, actually affordable to working poor families at 30 percent of median or less; but 5400 of those units are rented by households above the 30 percent level. This in effect displaces the lower income families and forces them to pay higher rent.

In Fort Worth, 60 percent of the rental housing was built before 1980, and 42 percent was built prior to 1970. Because age directly affects housing conditions,

older housing will be of poorer quality than newer housing.

Older housing is more likely to be affordable and occupied by low-income families. New affordable housing constructed through the LITCH program ensures that there is at least some replacement of the supply of quality housing stock for lower-income households.

Fort Worth needs to continue to receive low-income housing tax breaks in order to keep replenishing the supply of quality affordable housing.

As we all know, interest rates and particularly mortgage interest rates are on the way back up. The ability of renters to move into these home ownerships is decreasing.

Also, the affordability of homes purchased in Fort Worth has decreased significantly in the past five years. According to data from Texas A&M Real Estate Center, average home prices in Fort Worth have gone up 27 percent, to $133,600 since 2000. Therefore, many working families that might have left rental housing are having to stay in rental housing.

For all these reasons, the City of Fort Worth strongly opposes any changes to the QAP Low-Income Housing Tax Credit Program. Our citizens need this resource to

continue to meet their needs for quality affordable rental housing.

And I also have some comments on Mixed-Income Applications regarding possible alternative approaches for allocation of low-income housing tax credits.

The State's current procedures for allocation of low-income housing tax credits sometimes has unintended consequences; consequences that conflict with local jurisdictions' affordable housing needs and goals in particular.

TDHCA should be aware that many local jurisdictions would prefer mixed-income projects rather than 100 percent low-income projects.

The current application rating system used by TDHCA grants more points to projects that serve 100 percent low-income tenants, rather than projects that promote a mixed-income approach.

Therefore, 100 percent low-income projects are the norm. This is in effect a concentration of lower income populations in one area, rather than encouraging disparate distribution of low-income residents across a greater number and a wider variety of local neighborhoods. The larger the project and the greater the number of units, the more pronounced the effect.

Mixed-income housing projects are more acceptable to local communities, because low-income populations are not concentrated. We're not talking about properties that mix it for points with serving families that earn less than 50 percent of area median income.

The fact that the current point rating system used by TDHCA encourages only 100 percent low-income housing projects, makes it more difficult to utilize low-income housing tax credits, as a tool to encourage revitalization and redevelopment in central city areas.

Fort Worth is not alone in our efforts to redevelop their downtown. But develop-able real estate in downtown areas commands a premium price, as everybody knows.

Due to this high cost of real estate, it is not economically feasible to downtown developers to decide -- dedicate 100 percent of their housing projects to low-income purposes.

However, local political leadership is often very sensitive to the needs for workforce housing in the Central City.

Affordable rental units are needed for retail and restaurant workers, for office workers and for many other low-paid hourly workers working in downtown.

Local political leaders are often asked to provide incentives to developers willing to take the risk of investing in downtown and Central City areas. But they also would like to ensure that a wide spectrum of their constituents are served by this development.

The inflexibility resulting from a system that only allows for 100 percent low-income projects has a negative consequences for a local communities' ability to encourage balanced redevelopment in downtown Central City areas.

Another factor that affects local communities' building encouraged redevelopment in downtown and Central City areas is the current one-mile rule for Texas counties over one million in population.

Basically this rule does not allow us to do one project downtown, and expect to even be able to apply for another one next year without coming back to us for a lengthy type of discussion on that.

These neighborhoods are in need of reconstruction and redevelopment, and we think that rule should be basically waived for inner-city type areas.

For the reasons stated, the City of Fort Worth would like to recommend the following changes to the current for allocating low-income tax credits:

Design a raise system that achieves the following: rewards proposed mixed income projects, and allows them to point-score on an even basis with the 100 percent low-income housing projects. Thank you.

MS. HULL: Thank you. Is there anybody else who would like to comment on the QAP?

(No response.)

MS. HULL: The Multifamily Bond Program Rules establishes the 2008 rules for the Multifamily Bond program. The program issues tax-exempt and taxable bonds to fund loans to nonprofit and for-profit developers.

Is there anybody who wished to comment on the Bond Program Rules?

(No response.)

MS. HULL: The TDHCA HOME Program Rules. Veronica?

MS. CHAPA: Sure. This year, the HOME Division has significantly updated the TDHCA HOME Program Rules, with -- primarily with the restructuring for the OCC Program, defining the loan process, and general administrative changes.

We would like to welcome any comments regarding the HOME Program and Rules in general at this time. Does anyone have any comment on the HOME Program Rules?

(No response.)

MS. CHAPA: Okay, and with that I'd like to proceed to the Housing Trust Fund Program rules. This document establishes the 2008 Rules for the Housing Trust Fund, which is the only state-funded housing program. It is available statewide, and currently finances $3 million per year for the Texas Bootstrap Loan Program for low-income families.

The proposed changes maintain the flexibility of the program, and streamline current processes, to ensure that the policies are consistent with other department programs.

Are there any comments on the Housing Trust Fund Rules at this time?

(No response.)

MS. HULL: The Texas First-Time Homebuyer Program Rules. The Homebuyer Program utilizes funding from tax-exempt and taxable mortgage revenue bonds.

This program offers 30-year fixed-rate mortgage financing at below-market interest rates for very-low-, low-, and moderate-income residents purchasing their first home, or residents who have not owned a home in the preceding three years.

Qualified applicants access funds by contacting

any participating lender, who is then responsible for the loan application process and the subsequent loan approval.

(No response.)

MS. HULL: The Compliance Monitoring, Accessibility Requirements, and Administrative Penalties Rules. This document establishes the policies and procedures related to the TDHCA's monitoring of multifamily developments that are financed through the Department.

(No response.)

MS. HULL: The TDHCA Underwriting, Market Analysis Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines.

This document outlines the rules and guidelines related to TDHCA's evaluation of proposed affordable housing developments' financial feasibility and economic viability.

Are there any comments for any of these Rules?

(No response.)

MS. HULL: The Legal Services Division Rules.

The following Proposed Rules have been reviewed by the TDHCA Legal Services Division, and are being presented for public comment:

This includes the Providing Current Contact Information to the Department Rule, and the Asset Resolution and Enforcement Rules.

Are there any -- is there anyone who would like to comment on these rules?

(No response.)

MS. HULL: Is there anybody who would like to provide any public comment at this time?

(No response.)

MS. HULL: Seeing as there's none, I'll go ahead and conclude the meeting today. Thank you very much for coming.

(Whereupon, at 11:47 a.m., the hearing was concluded.)

C E R T I F I C A T E

IN RE: State of Texas Consolidated Public Hearing

LOCATION: Dallas, Texas

DATE: October 1, 2007

I do hereby certify that the foregoing pages, numbers 1 through 20, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Judy Farnsworth before the Texas Department of Housing and Community Affairs.

10/3/2007
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2007 STATE OF TEXAS
CONSOLIDATED PUBLIC HEARING

El Paso City Council Chambers
2 Civic Center Plaza
El Paso, Texas

September 24, 2007
6:00 p.m.

PRESIDING: BRENDA HULL

ALSO PRESENT:

DAVID BROWN, ORCA
SANDY GARCIA, TDHCA
TOM GOURIS, TDHCA
ROBBYE MEYER, TDHCA

ON THE RECORD REPORTING
(512) 450-0342

A G E N D A

P R O C E E D I N G S

MS. HULL: Good evening, everybody. Welcome to the 2007 State of Texas Consolidated Public Hearing in El Paso. These hearings are an opportunity to comment on a significant portion of the Texas Department of Housing and Community Affairs, Office of Rural Community Affairs, and Texas Department of State Health Services annual policy rule and planning documents.

If you haven't already done so, please take this opportunity to silence all your communication devices, and for anyone interested in speaking, we need you to fill out a witness affirmation form. They're located outside on the table.

Also, as you speak, please provide your name and tell us who you represent. And as a reminder, we're here to accept public comment, and we won't be answering any questions about the rules that are out for public comment.

The comment period is September 10 through October 10 for all documents, with the exception of the HOME Program rule and the accessibility requirements rule. The comment period for those rules are September 24 through October 29.

Written comment is encouraged, and it may be

provided at anytime during the public comment period. You can send your comments to the rules to an e-mail address: 2008rulecomments@tdhca.state.tx.us or by mail to TDHCA, 2008 Rule Comments, PO Box 13941, Austin, Texas 78711-3941. You can also fax it to 512-475-3978.

Any written comments on the one-year action plan, regional allocation formula, or affordable housing need score should be sent to Brenda.Hull@tdhca.state.tx.us or the same mailing address, to Brenda Hull.

The first document that we're going to accept public comment for is the 2007 [sic] State of Texas Consolidated Plan One-Year Action Plan. TDHCA, ORCA, and the Department of State Health Services, we've prepared this 2008 State of Texas Consolidated Plan One-Year Action Plan according to the U.S. Department of Housing and Urban Development's reporting guidelines.

This plan reports on the intended use of funds received by the State of Texas from the U.S. Department of Housing and Urban Development for the program year 2008. The plan illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2005-2009 State of Texas Consolidated Plan.

The plan covers the State's administration of

the Community Development Block Grant program, the Emergency Shelter Grants program, the HOME Investment Partnership program, and the Housing Opportunities for Persons with AIDS program.

And from the Office of Rural Community Affairs we have David Brown.

MR. BROWN: Good evening. My name is David Brown. I'm from the Office of Rural Community Affairs. I'll be making just a couple of brief comments on the 2008 Action Plan.

Like was previously mentioned, I won't be answering any questions, but I will be taking your public comment today, and obtaining contact information so that any questions that you might have can be responded to.

Because the 2008 fiscal year is the second year of a two-year biennial selection process for the Community Development Fund, Community Development Supplemental Fund, and Colonia Construction Fund, no changes were made to these or other smaller beneficial biennial fund categories.

However, there are some noted proposed changes that could be coming in the works. The Microenterprise Loan Fund proposes a few adjustments to the scoring factors and semiannual competition.

The Small Business Loan Fund proposes a few adjustments to the scoring factors. The STEP program proposes a few refinements to the scoring factors, and the Renewable Energy Demonstration Pilot Program proposes a renewable energy pilot program funded through deobligated funds and program income.

I also need to note that currently we're also proposing to the executive committee a revision in the 2008 action plan related to HUD funding on the RRC process. This proposed revision will be covered in the 2009 action plan public hearings and any consolidated plan hearings.

If you have any further questions, please contact me. I'll be glad to take your question and get back to you with an answer. Thank you.

MS. HULL: Now, I don't have any witness affirmation forms for the CDBG program. Is there anybody who would like to speak?

(No response.)

MS. HULL: The next program covered by the One-Year Action Plan is the HOME Investment Partnerships Program, and we have Sandy Garcia.

MS. GARCIA: Hello. I'm Sandy Garcia with the Department of Housing and Community Affairs HOME Division,

and the HOME Investment Partnership Program referred to as the HOME program awards funding to various entities for the purpose of providing safe, decent, affordable housing across the state of Texas.

The provide this type of support to the communities, HUD awards the department approximately $41 million dollars per year. Under the HOME program awards -- under the HOME program, TDHCA awards funds to applicants for the administration of the following activities: homebuyer assistance, which provides down payment, closing cost assistance for up to $10,000 for eligible households; contract-for-deed conversion, which is categorized under the homebuyer assistance program to convert single-family contract-for-deeds into warranty deeds, and it also provides funds for the rehabilitation and reconstruction of the unit to bring that unit up to standards.

Under the Owner-Occupied Housing Assistance Program, it provides funds for eligible homeowners for the rehabilitation or reconstruction of the single-family home. Under the Tenant-Based Rental Assistance Program, it provides rental subsidies for up to 24 months.

Also under the HOME program is the Rental Housing Development Program, which provides funds to

build, acquire and/or rehabilitate affordable multifamily housing.

This activity also includes the Community Housing Development Organization set-aside, which is 50 percent of the HOME allocation.

MS. HULL: I do not have any witness affirmation forms for the HOME program. Is there anybody who would like to give public comment on the HOME program?

(No response.)

MS. HULL: The Housing Opportunities for Persons with AIDS Program is also covered under the One-Year Action Plan. The Texas Department of State Health Services addresses the housing needs of people with HIV and AIDS through the HOPWA program and provides emergency housing assistance in the form of short-term rent, mortgage, and utility payments to prevent homelessness; tenant-based rental assistance, which enables low-income individuals to pay rent and utilities; supportive services, which provides case management, basic telephone assistance, and smoke detectors; and permanent housing placement.

If you have any questions regard HOPWA, you can contact the Department of State Health Services, 512-533-3000.

The next item that is up for public comment is the Regional Allocation Formula. TDHCA is legislatively required to use a formula to regionally allocate its HOME, Housing Tax Credit, and Housing Trust Fund Program funding.

The resulting formula measure the affordable housing need and available resources in the 13 uniform state service regions across the state. The formula also allocates funding to urban and rural areas within each region.

The formula is updated annually to reflect current demographic and other resource-available data and also response to public comment.

I do have one witness affirmation form for the Regional Allocation Formula: Bobby Bowling.

MR. BOWLING: Thank you. And thank you for coming to El Paso; we appreciate you all coming to take public comment.

Mine is more -- and I understand there's not going to be any dialog back and forth, and I'll provide my comments in writing, but the thing that I wanted to draw attention to most while you all are here is I'm confused as to the $500,000 ceiling for rural set-asides in each of the 13 regions around the state.

The way that I understood the statute and the way that I understood it passed from the legislature was it was put at the end of the Regional Allocation Formula statute, which was after all the need-based criterion and poverty-based criterion are met, if you don't come to a number of $500,000, then that should be the ceiling for each region.

But when I look on the website, I'm confused as to like Table 1 in Appendix A, where it seems like you have started with a $500,000 floor and then, with the proposed rule, have added need-based multipliers into the rural set-asides.

I highlighted eight different regions that I believe should be a $500,000 funding amount from the regions, and when you go to the Table 9, I believe it is -- I'm sorry -- Table 10, when it shows if you have those eight areas with $500,000 in this spreadsheet, you still get to the 22.6 percent of the State's funding amount going to rural, which was the other criterion passed by the legislature, the 20 percent -- minimum of 20 percent of the State's housing tax credit money, for example, should go to rural projects.

So I'm a little confused. Again, I'll be addressing that in written comments, but, you know, if

anybody would be willing to shed some light on my misunderstanding, I think that would be great; otherwise maybe I can get some feedback from somebody after this public hearing.

MS. HULL: Thank you.

MR. BOWLING: Thank you.

MS. HULL: The next item up for public comment is the Affordable Housing Need Score. It's the scoring criteria used to evaluate HOME, Housing Tax Credit, and Trust Fund applications. It's not specifically legislated by the State, but it helps address need-based funding allocation requirements by responding to the Section 42 requirement that the selection criteria used awarding the housing tax credit funding must include housing needs characteristics, and also the State Auditor's Office and sunset findings that call for the use of objective need-based criteria to award TDHCA's funding amounts.

I have no public -- witness affirmation forms for the Affordable Housing Need Score. Is there anybody who'd like to comment on this?

(No response.)

MS. HULL: The next item up for public comment is the Housing Tax Credit Qualified Allocation Plan and rules, and we have Robbye Meyer, from the multifamily

program staff.

MS. MEYER: Robbye Meyer, director of Multifamily Finance. The Qualified Allocation Plan document establishes the rules for the 2008 Housing Tax Credit Program, and this program uses federal tax credits to finance the development of high-quality rental housing for income-eligible households and is available statewide.

Do we have any --

MS. HULL: We do have one person signed up to speak: Bobby Bowling. I'm sorry; there's two people. Bobby Bowling first.

MR. BOWLING: I have more comments that I'll put in writing also, Ms. Meyer, but I think just generally I wanted to say I appreciate that you have limited the amount of changes from one year to the next in the QAP; I think it's so much easier for us to deal with as developers, when we don't have to go -- undergo some massive changes that we have to relearn all over again from year to year.

The only thing -- and, again, I've only looked at this since Friday and over the weekend, but on the selection criteria items -- and they're new numbers, but 17, 18, and 19, the new numbers, all three of those items last year were eligible for seven points, and they've been

changed to six points.

And I'm just a little, again, confused as to why that happened. I thought the legislative mandate kind of ceiling for non-legislatively mandated items was eight points, so I thought seven was good for all three of those items.

One of them I'm not even eligible for, but I just -- you know, I was going to put that comment in writing, and maybe I could talk to you afterwards.

MS. MEYER: Sure.

MR. BOWLING: But by and large I just -- I want to applaud that, again, there's not a whole lot of changes; I think it's a good QAP. It's fair and objective, and that's all we can ask for, as private developers, of our state agency. So thank you.

MS. HULL: The next witness is Bill Lilly.

MR. LILLY: Good evening. Bill Lilly. I'm with the City of El Paso, Department of Community Development. My comments really aren't very specific on this particular QAP, but I'd just like to make some comments about how we go forward in the future.

I'm going to talk about some of the things that are happening currently in El Paso, which, again, I don't think you had new information; therefore, it was not able

to be reflected in this QAP, but I do think it will have a significant impact in the future.

El Paso, as you know, was awarded, as a part of a base realignment, 20,000 new troops that will be coming to El Paso over the next five years. In fact now they're talking possibly about 30,000 troops. That does not include the family members.

That's potentially another 50- to 60,000 individuals who are going to be moving to El Paso. We actually had an analysis that was done that indicated that most of those new troops that are coming in, they can't afford the rents currently in El Paso. But I think what that's going to do is have a -- put what I call downward pressure on the housing market in El Paso.

I think the property owners will become aware that individuals are coming to El Paso who can't afford the rents, and we're going to see those rents increase [sic], but I think that's going to have a devastating impact on our existing low-, moderate-income families, and it's going to have a severe -- cause a severe shortage, in my opinion, of affordable housing.

I will be making some written comments on that in terms of how we go forward in the future, because I do think that's going to have a huge impact on affordability

in El Paso in the next several years.

I'd just like to mention something else. I've been in El Paso for a little more than a year, and looking at the QAP I really didn't see a lot of set-asides. In a couple of the states I've been in before, one of the things that we're currently doing, or working on, or targeting very distressed neighborhoods, doing neighborhood revitalization strategy areas, neighborhood revitalization areas, and I do think it will be appropriate for communities that have approved revitalization strategy areas whereby they are targeting funding, addressing items such as crime, education, things of that nature, that funds be set aside for housing, because housing is in fact one of the items or elements that assist in revitalizing distressed neighborhoods.

So with those very general comments, and I'll put something in writing. Thank you.

MS. MEYER: Thank you.

MS. HULL: The next item up for public comment is the Bond Program rules.

MS. MEYER: The Multifamily Bond Program rules establish the rules for the TDHCA 2008 Multifamily Bond program, and this program issues tax-exempt and taxable bonds to fund loans to nonprofit and for-profit

developers.

MS. HULL: I do not have any witness affirmation forms for the Multifamily Bond Program rules.

Anybody like to speak on that item?

(No response.)

MS. HULL: The next item up for public comment is the TDHCA HOME Program rule.

MS. GARCIA: The HOME Program rule this year -- for 2008 was significantly updated, and we welcome any comments regarding the new rule.

MS. HULL: I did not receive any witness affirmation forms for the HOME rule either, surprisingly.

The next item up for comment are the Housing Trust Fund Program rules.

Sandy Garcia.

MS. GARCIA: This document establishes the 2008 rules for the Housing Trust Fund, which is the only state-funded housing program. It's available statewide and currently finances 3 million per year for the Texas Bootstrap Loan Program for low-income families.

The proposed changes maintain the flexibility of the program and streamline processes to ensure the policies are consistent with other department programs.

MS. HULL: I have one witness affirmation form

from Mr. Bill Lilly.

Would you like to speak to the Housing Trust Fund rules?

MR. LILLY: Again, Bill Lilly, Community Development. Again, as I indicate, I really have not had any experience with the Texas Housing Trust Fund, but from what I understand -- I know it's limited in funding, 100-and-some-odd thousand dollars committed for Region 13, but it's my understanding that the experience has been that it really has not been accessible inside of the urban area.

One of the things I would like to comment is that I think there are pressing housing needs in the City of El Paso; we would really like to work with our existing funds, attempting to leverage -- because there is a tremendous need, so -- and, again, I know these funds are increasing, so, again, we'd like to identify opportunities to work with the State of Texas on Housing Trust Fund to make housing opportunities available for residents in the state. Thank you.

MS. HULL: The next item up for public comment is the Texas First-Time Homebuyer Program Rules.

These rules utilize -- the program utilizes funding from tax-exempt and taxable mortgage revenue bonds. The program offers 30-year fixed-rate mortgage

financing at below-market rates for very-low-, low-, and moderate-income residents purchasing their first home, for residents who have not owned a home in the preceding three years.

Qualified applicants access funds by contacting any participating lender, who is then responsible for the loan application process and loan approval.

Would anybody like to comment on the Texas First-Time Homebuyer Program Rules?

(No response.)

MS. HULL: The Compliance Monitoring, Accessibility Requirements, and Administrative Penalties rules: These documents establish the policies and procedures related to TDHCA's monitoring of multifamily developments that are financed through the department.

Any public comment on the compliance rules?

(No response.)

MS. HULL: The TDHCA Underwriting, Market Analysis Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement rules and guidelines are the next item up for public comment. We have Tom Gouris, Real Estate Analysis Division.

MR. GOURIS: This document outlines the rules

and guidelines related to TDHCA's evaluation of proposed affordable housing developments' financial feasibility and economic viability.

Are there any comments?

MS. HULL: I don't have any witness affirmation forms. Anybody like to comment?

Bobby Bowling?

MR. BOWLING: I didn't know we were going to have Tom here, so I just want to take the opportunity to properly suck up and tell him --

(General laughter.)

MR. GOURIS: What did you say?

MR. BOWLING: I think there were a lot of grief that I had with the underwriting rules from '06, and I sent in a lot of written comments, and I very much appreciate you took a lot of the input that I gave you and, I think, incorporated a lot of the comments and the concerns that I had, specifically in a project in Santa Rosalia, where it was so poor it was hard to reach those people.

But I applaud you for the changes that you made in the underwriting rules back then, and again, a general comment that I appreciate that there's not wholesale changes again to the underwriting rules; it makes it

easier for us to follow. Thanks.

MS. HULL: The Legal Services Division Rules: The following proposed rules have been reviewed by the TDHCA Legal Services Division and are being presented for public comment.

These include the Providing Current Contact Information to the Department rule and the Asset Resolution and Enforcement rules.

Would anybody like to comment on these rules?

(No response.)

MS. HULL: Is there anybody else who would like to provide public comment on any of these items?

Yes?

MS. AUSTIN: Excuse me. Are all the rules now open for comment?

MS. HULL: Yes.

MS. AUSTIN: Great. Good evening. My name is Susan Austin. I'm with the El Paso Coalition for the Homeless. I'll finish filling that out in a moment.

I haven't gotten a chance to review all these in near the detail that I would like, and so I must admit I'm very confused about them, but there were a couple of things that I did want to comment on.

One is I understand about the at-risk pool for

the QAP. I'm not sure that that's intended to include the Section 8 vouchers or the SRO SHP ten-year -- the ten-year Section 8 vouchers that are awarded under SHP, the special needs program of HUD.

If so, we would like for those to be included as ones that may be expiring and that are in need of further extension.

I have a question that arose this morning when asking about a qualified nonprofit organization -- nonprofit project, I believe. In the definitions I believe it says that that is controlling interest -- I'm sorry; I don't have my glasses -- controlling interest, material participation, and other items. And I wasn't clear whether that was supposed to be "and" or "or." So perhaps you could look at that.

The item this morning that was presented in training about the concentration of properties within a certain area, I don't know if that is included in your rules in your proposals, but one thing, it seems to me, is that -- I heard a mention that that might be coming from Houston. Houston, I understand, doesn't have zoning; that's its -- I won't say its problem, but that's its issue.

For communities that do have zoning, it would

seem to me that if an area is zoned for something like this, then that ought to be the end of it, and so I don't believe we should take what -- the fact that Houston doesn't have zoning issue and make that an issue that comes around to the rest of the state.

You all aren't zoning people; you all are TDHCA, something very different.

I do think that supportive services are a very important component of a housing project, especially when you get to the -- to people that may be more financially in need, and I see that you've got points that are awarded to the supportive services. I hope you have a mechanism for determining or following up on whether people do perform those supportive services the way they say they're going to perform them.

And of course one of the things that -- we're from the El Paso Coalition for the Homeless; we're part of groups that are very much in favor of a lot of supportive services in these projects, so that you can bring homeless and very needy people out of homelessness and also avoid some of the costs on the public infrastructure for everything from emergency rooms to jails to pressures on the public systems, and that happens by getting people stabilized in housing; that takes a lot of services.

So if you all are not the mechanism for funding and ensuring that those services are provided, we need to find some entity that is the mechanism for that.

Let me just see one last comment that I had.

(Pause.)

MS. AUSTIN: I believe that's it. But we'll follow up with an e-mail. Thank you very much.

MS. HULL: Thank you.

Is there anybody else who would like to provide public comment?

(No response.)

MS. HULL: Seeing that there nobody -- nobody else would like to comment, I'm going to go ahead and conclude the meeting. Thank you very much for attending this TDHCA public hearing.

(Whereupon, at 6:30 p.m., the hearing was concluded.)

C E R T I F I C A T E

IN RE: State of Texas Consolidated Public Hearing

LOCATION: El Paso, Texas

DATE: September 24, 2007

I do hereby certify that the foregoing pages, numbers 1 through 24, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Stacey Harris before the Texas Department of Housing and Community Affairs.

9/28/2007
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

2007 STATE OF TEXAS
CONSOLIDATED PUBLIC HEARING

Council Chambers
Houston City Hall Annex
901 Bagby Street
Houston, Texas

September 26, 2007
6:00 p.m.

PRESIDING: BRENDA HULL

ALSO PRESENT:

TINA LEWIS, ORCA
SANDY GARCIA, HOME Division
MIKE GERBER, TDHCA Executive Director

ON THE RECORD REPORTING
(512) 450-0342

A G E N D A

P R O C E E D I N G S

MS. HULL: I think we'll go ahead and get started. Good evening, everyone. My name is Brenda Hull. Welcome to the 2007 State of Texas Consolidated Public Hearing in Houston.

These hearings are an opportunity to comment on a significant portion of the Texas Department of Housing and Community Affairs, Office of Rural Community Affairs, and Texas Department of State Health Services Annual Policy, Rule and Planning documents. And all documents under review are available on the TDHCA website.

If you haven't already done so, please take this opportunity to silence any communication devices, and for anyone interested in speaking, we ask that you fill out a witness affirmation form. That's located on the front table.

And as you speak, please provide your name and who you represent. And as a reminder, we're here to accept public comment on the Rules, and, we're not able to respond to questions at this time.

The public comment period is September 10 through October 10 for all documents, with the exception of the TDHCA HOME Program Rule and the Accessibilities Requirements Rule. The public comment period for the HOME

Rule and the Accessibility Requirements Rule those rules is September 24 through October 29.

Written comment is encouraged, and it may be provided at any time during the public comment period. You can send comments on the rules by e-mail to: 2008rulecomments@tdhca.state.tx.us or by mail to TDHCA, 2008 Rule Comments, PO Box 13941, Austin, Texas 78711-3941. Or you could also fax it to 512-475-3978.

Any written comments on the One-year Action Plan, Regional Allocation Formula, or Affordable Housing Needs Score can be sent to Brenda.Hull@tdhca.state.tx.us.

The first document out for public comment that we're going to discuss this evening is the 2007 [sic] State of Texas Consolidated Plan One-Year Action Plan. TDHCA, ORCA, and the Department of State Health Services, we've prepared the 2008 State of Texas Consolidated Plan One-Year Action Plan according to the U.S. Department of Housing and Urban Development's reporting guidelines.

The plan reports on the intended use of funds for the Program Year 2008, which begins February 1, 2008 and ends January 31, 2009. The plan illustrates the State's strategies in addressing the priority needs and specific goals and objectives, and the plan also covers the State's administration of the Community Development

Block Grant Program, the Emergency Shelter Grants Program, and the HOME Investment Partnership Program, as well as the Housing Opportunities for Persons with AIDS Program.

The Community Development Block Grant program, we have a member of ORCA Staff representing. Her name is Tina Lewis.

MS. LEWIS: Because Fiscal Year 2008 is the second year of the two-year biennial selection process for the Community Development Fund, Community Development Supplement Fund, and the Colonia Construction Fund, no changes were made to these, or the smaller biennial fund categories.

Micro Enterprise Loan Fund, proposes a few adjustments to the scoring factors in a semi-annual competition. The Small Business Loan Fund proposes a few adjustments to the scoring factors.

Texas Small Towns Environmental Programs STEP Process proposes a few refinements to the scoring factors. Renewable Energy Demonstration Pilot Program proposes a renewable energy pilot program funded through de-obligated funds program income; $500,000 in de-obligated funds program income will be available initially, with a maximum award of $500,000 and a minimum of $50,000.

Selection factors, (a) type of project, 15

points, (b) innovation technology methods, 10 points; (c) duplication in the other rural areas, 10 points; (d) long-term cost benefit and Texas Renewable Energy goals, 10 points; partnership collaboration, 10 points; leveraging, 10 points; location in rural areas 5 points; and that's how that's -- the 2008 Texas CBG Action Plan.

MS. HULL: Is there anybody who would like to comment on the CBG Action Plan?

(No response.)

MS. HULL: If not, we'll move on to the next item, which is the Action Plan for the HOME Investment Partnerships Program.

MS. GARCIA: Hello. I'm Sandy Garcia with the HOME Division. The HOME Investment Partnership Program, referred to as the HOME program, awards funding to various entities for the purpose of providing safe, decent, affordable housing across the State of Texas.

To provide this type of support to our -- to the communities in Texas, HUD awards an annual allocation of approximately $41 million to the Department.

Under the HOME program, there are five programs that the HOME programs awards funds to applicants who apply.

First is the Homebuyer Assistance Program,

which provides down payment and closing cost assistance for up to $10,000 for eligible households; Contract-for-Deed Conversion Program, which is categorized under the Homebuyer Assistance activity provides funds to convert single-family contract-for-deeds into a warranty deed, and it also provides funds for the rehabilitation or reconstruction of the unit. There's a $2 million set-aside each year from the HOME Program.

The Owner-Occupied Housing Assistance Program provides funds for eligible homeowners for the rehabilitation or reconstruction of their single-family home.

The Tenant-Based Rental Assistance Program provides rental subsidies, which may include security deposits to eligible tenants for a period of up to 24 months.

The Rental Housing Development Program provides funds to build, acquire and/or rehabilitate affordable multifamily housing. This activity also includes the Community Housing Development Organizations, or CHDOs, which is 15 percent of the total HOME allocation set-aside.

MS. HULL: Is there anybody here that would like to speak on the HOME Action Plan?

(No response.)

MS. HULL: If not, we'll move on to the next item, which is the Housing Opportunities for Persons with AIDS Program. The Texas Department of State Health Services addresses the housing needs of people with HIV and AIDS through the HOPWA program, which provides emergency housing assistance in the form of short-term rent, mortgage, and utility payments; tenant-based rental assistance; supportive services -- and permanent housing placement.

If there's anybody -- I did not receive any witness affirmation forms for the HOPWA Program. Is there anybody here who'd like to comment on that?

(No response.)

MS. HULL: The next item up for public comment is the Regional Allocation Formula. TDHCA is legislatively required to use a formula to regionally allocate its HOME, Housing Tax Credit, and Housing Trust Fund Program funding.

The resulting formula objectively measure the affordable housing need and available resources in the 13 state service regions that use this for planning purposes. The formula allocates funding to rural and urban areas within each region.

As a dynamic measure of need, the formula is updated annually to reflect the most current demographic and available resource information. This also responds to public comment on the formula, and includes other factors as required, to better assess regional affordable housing needs.

Is there anybody who would like to comment on the Regional Allocation Formula?

(No response.)

MS. HULL: The next item up for public comment is the Affordable Housing Need Score. It's a scoring criteria used to evaluate the HOME, Housing Tax Credit, and Housing Trust Fund applications.

It's not specifically legislated by the State, however it helps to address other need-based funding requirements. The score provides a comparative assessment of each place's level of need relative to the other places within the State Service Region.

The score encourages applicants to request funding to serve communities that have a high level of need. Anybody who would like to comment on the Affordable Housing Needs Score?

MS. ZOLLINGER: I'm not sure what -- I think, I'm not sure what area we're --

MR. GERBER: Ma'am, could you come to the microphone.

MS. ZOLLINGER: Sorry. I'm not sure what area --

MR. GERBER: Wait until you get to the microphone.

MS. ZOLLINGER: Okay. I'm not sure what area, either that one or the last one, that we're trying to comment on, so --

MS. HULL: Okay. Did you submit a witness affirmation form?

MS. ZOLLINGER: We did.

MS. HULL: Did you want to comment on the Tax Credit Program?

MS. ZOLLINGER: Correct.

MS. HULL: And is it the Qualified Allocation Plan? This is the Regional Allocation Formula, which tells how many dollars go in each region. Is that what you're interested in speaking about, or --

MS. ZOLLINGER: It's kind of an application -- you know, the application program in general. The --

MS. HULL: Okay.

MS. ZOLLINGER: -- ideas towards the whole program in general. So I guess I'm not clear which part.

MS. HULL: When we get to the Qualified Allocation Plan, I'll call you up. Thank you.

MS. ZOLLINGER: Okay. Sorry.

MS. HULL: I'm sorry, it's the next thing. You could have stayed --

(Laughter.)

MS. HULL: Okay. If there's nobody that wants to comment on Affordable Housing Needs Score -- the next topic is the Housing Tax Credit Qualified Allocation Plan and Rules. This document establishes the 2008 rules for the Housing Tax Credit Program.

The Housing Tax Credit Program uses federal tax credits to finance the development of high-quality rental housing for income-eligible houses, and it's available statewide.

I have two witness affirmation forms. Kathi Zollinger?

MS. ZOLLINGER: My name is Kathi Zollinger, and I'm with Harris County MUD 71 and Bridgewater Community Association.

And I'm not going to get through this because you guys are probably going to cut me off, so I'll try not to read.

I was involved with the Elrod Place Project, I

guess opposition if you will, and I came to Austin to testify. Unfortunately, since the Staff did not recommend allocation, and the hours got late we were kind of cut off and not -- the Chair kind of got to us and said that they would ask us at the end of the process to come back later at the end of the day, and -- if we still wanted to testify.

That never happened, and, you know, our -- the homeowners that came and the Association kind of went to a lot of expense. We rented a bus, and so they felt, you know, those people took days off work, which was expense to them.

So I guess what I would like to, you know, say, that they -- I just want you all to know or the Staff to know and the Board members to know that they didn't feel like they got to participate the way that they should have. Even though we won, so to speak, or they felt, you know, that they did prevail, that they didn't feel like they got to participate in the process.

And so, first of all, I'm a little nervous, so -- I appreciate you guys coming and spending your time, and coming to do this, and one thing I didn't say in the paper is, I'm not -- I know you can't answer questions, but I'm not sure if this was -- I get an email for these

things, so that's how I knew, but I'm kind of sad to see there's not a lot of people here.

So I don't know if it's advertised or not, so it would be great if it was better advertised.

And, let me see, sorry.

(Pause.)

MS. ZOLLINGER: One of the big things that I would like to see happen that maybe, I don't know if this can happen, but if there's any way to streamline the application process more, I know that thing is 400 pages long.

I spent my Easter weekend reading that thing, and I don't know if you're the ones that do that, but it's an ugly document (laughs), and I know that there's -- there is a -- there was a lot of things that were concealed, and some ugly things, and I think that's why we did prevail, that were concealed from our community.

And if there's any way to streamline that thing in a better way, I know that we certainly would like to see that done.

So --

MR. GERBER: Are -- Ma'am, are you specifically talking about the tax credit application --

MS. ZOLLINGER: Correct.

MR. GERBER: -- that a developer submits to the Department?

MS. ZOLLINGER: Correct.

MR. GERBER: Okay. Just wanted to make sure I've got --

MS. ZOLLINGER: There's -- seems like there's a lot of repetitive things in there, and, that he submitted a number of times for a number of things, and some of the things that he submitted were, well. I don't know how they got through.

I -- we found them to be fraudulent. I mean, frankly, they were fraudulent. They were -- you know, they were not -- he said he was in one MUD, they were -- he was in another MUD, and the MUD that he said he was in, ended up at the end of the day that he was not in that MUD.

And so that was a big reason why they didn't annex him, and when you guys responded to me, you said that you found nothing wrong. And I still don't understand that to this day, because at the end of the day, they did not annex him. So that's one reason why the project didn't happen.

So, another thing, our community had a meeting where there were 700 people strong, and that's how

interested our community was in this project. And because the other -- the public hearing was down here, you know, at the time that it was, there was maybe 30 people.

You know, it's hard for working people to get to this location. And I understand one of the other tax credit programs -- and this is all new to me this year, but I put hundreds of hours into it, and I understand they had one at Clay Road, and Highway Six.

So I don't know why they're different, and why some of them can be there and some of them have to be here, but I'd like to see or we would like to see that -- changed, so that people can, you know, can be -- where people can get to it. So the, you know, it's just, it's difficult. And we -- that's what -- the homeowners said this.

And one thing I would say, that we didn't just do this, you know, we were accused of the whole NIMBY thing, and when people come to both boards that I sit on, I want to come with a solution. I just don't want to do this, not here.

I -- when I went to that meeting and they said, you know, Tell us where. I went back home and I said, What is the solution to this? And I do have some. I'm not going to tell everything here today, but it's in here,

the -- some of the solutions that I did.

And I've talked to the school district, and I've talked to Mr. Callegari, and I've talked to some other people from the Katy Economic Development Council, and we're talking about a task force.

And I actually have asked you guys to meet with me, and I never got a response. So --

MR. GERBER: Who did you ask?

MS. ZOLLINGER: I sent emails to all of the Board members.

MS. ZOLLINGER: Did you contact Staff, and ask for a meeting with the Staff?

MS. ZOLLINGER: I think they were included in that.

MR. GERBER: Okay. If -- let me ask you to write to me, and my name is Michael Gerber, and I'm the --

MS. ZOLLINGER: I think I -- you were on that --

MR. GERBER: -- Executive Director of the Department --

MS. ZOLLINGER: -- I think you were on that.

MR. GERBER: Okay. I never got that letter. But afterwards, if you would meet with me, I'd be glad to give you that information on how to reach me, and if you

call my office I'd be glad to set up a meeting, either next time I'm here, or the next time you're in Austin.

Because we very much value what constituents have to say, especially in a community like Katy, where frankly, we know there's a need for affordable housing.

But we also want to work with the community to try to fit into -- and our rules can be adapted work within how a community envisions its multifamily affordable housing development going.

So I'd be delighted to meet with you.

MS. ZOLLINGER: Okay. Okay, so -- okay, I think --

MR. GERBER: And are you on the Department's listserv?

MS. ZOLLINGER: I get all of the little, whatever the things are --

MR. GERBER: You get the updates that come, about all our activities and opportunities for public comment?

MS. ZOLLINGER: Well, I got this. I don't know if that means I get everything. But --

MR. GERBER: But you get an email from the Department, a ListServ that sends you regular updates on when there are opportunities to contribute, in a public

setting like this?

MS. ZOLLINGER: Whatever this was, I got. So I don't know if that means everything --

MR. GERBER: Okay. Okay.

MS. ZOLLINGER: And then, I don't know if you guys have any impact on this, but legislatively the other light bulb moment I had the other day was, on MUD boards, and I serve on one so I probably am digging a hole here, but on developer MUD boards, to have, you know, they pick, you know, it's a hand-picked thing of friendly folk.

And if, you know, two of those people were actually those type of people and three of them came from, for example, maybe a mile and a half circumference around that new district, so that it was more fair.

And this is probably way outside of your thing, but --

MR. GERBER: It is.

MS. ZOLLINGER: -- you know people in Austin, so, you know.

MR. GERBER: We'll refer you to Representative Callegari.

MS. ZOLLINGER: Yes. And she's right there, so -- it's been conveyed. But anyway, so I'm going to stop, and hopefully somebody, you guys will read this

because there's a lot more in there, and thank you for coming here today.

MS. HULL: Thank you.

MR. GERBER: Sure, let me just remark to you that, you know, I think the intent of our Board was not to prevent anyone from an opportunity to speak. It was just that the Board meeting was already destined to be about eight hours long, and we knew, our Board members knew that Elrod Place, as well as some other properties, were not going to get tax credits.

And that was just very clear from the list that had been made available to the public, seven days before. And so even the folks that had come, and we want people to have an opportunity to give public comment, one of the things that I think our Board has said that's important, is that -- because they're a volunteer board as well, and, you know, they're taking time, as you are in your MUD Board, you know, they're -- it's important that, public comment where possible; which, as well-organized as it was in the case of Elrod Place, you know, that it be coordinated so that each speaker is not necessarily saying the same thing; that their comments are really value-added.

And so I think that was -- the intent was I

think to try to get through a very challenging day, to distribute $42 million in tax credits, which really have a value of about $420 million, you know, and get that done in a reasonable period.

And I'm sorry that folks that, in Katy who were associated with that development, felt like they weren't heard, because we very much try to -- and I think we're the only department that, if you go to other agencies, as I know you probably have.

You know, we spend literally a couple of hours at the beginning of every Board meeting, and really listening to what neighborhoods and others, neighborhood groups and nonprofit organizations and, you know, interested folks who, you know, look after tenants and care about low-income Texans, what they have to, you know, what they have to say.

And those views are very important to our Board, we have a couple of Board members who come from, you know, from the Houston area, and Houston development is in particular a challenge, you know, it's a very different kind of development model that's challenging, you know, in comparison to other parts of the State.

So we really do value that public input. So I just, let me say I apologize, if anyone felt like they

didn't have their fair share, their fair opportunity to be heard. And I'd be -- I'd welcome the chance to, you know, to listen --

MS. ZOLLINGER: Well, let me just say --

MR. GERBER: -- if that would be helpful.

MS. ZOLLINGER: -- just say one more thing and then I'll go. But the people that came, I think the perception perhaps of all of Katy is that we all have money, and we don't. And especially those people that came, you know, Bridgewater is not, or MUD 71 is not Cinco Ranch by any means.

MR. GERBER: Sure.

MS. ZOLLINGER: And so those people that took those -- that day off to come and speak, I mean, it was hard to get five people to take that day off and get up there.

So I think when -- they didn't really understand what was going on, and when that happened to them it was probably the worst five people that could have happened to. So -- not your fault, you didn't know, and I don't think that we all until later really understood that when the whole -- that it was really a dead deal.

As -- I mean it was like, we were told, Well it's on a waiting list so it really could happen. And

then we kind of understood for reasons later, when we heard that they got sent back their earnest money, that it was -- so, that's kind of. Anyway, so --

MR. GERBER: Sure. Well, I'd be glad to meet with you all, and I'm sorry --

MS. ZOLLINGER: Thank you --

MR. GERBER: -- and pass it on to those folks.

MS. ZOLLINGER: -- thank you.

MS. HULL: The next witness is Gracie Espinoza.

MS. ESPINOZA: I've got a letter here, actually addressed to Mr. Gerber, but I guess it's to everybody.

It's from Representative Bill Callegari, House District 132, it's, "Thank you for providing me with the opportunity to comment on the proposed 2008 Qualified Allocation Plan and Rules for the Housing Tax Credit Program.

"I have two suggestions for the proposed Rules. Both suggestions are possible solutions to problems that I have encountered with previously proposed tax credit developments in my District.

"The current rules limit notice to, and entitle input from only State Representatives, Senators and certain county and city officials. These rules do not require that notice be provided to directors of Municipal

Utility Districts, or that district directors be given meaningful standing when providing input on their proposed development.

"I think this omission hurts areas that are not only located within -- that are not located within the corporate boundaries of a municipality, but are located within a MUD.

"I think the proposed Rules should be amended to include MUD directors among the list of officials eligible to receive notice regarding a proposed project, and to provide weighted input on that project.

"Like State representatives, senators, mayors, and county commissioners, MUD directors are elected officials. In addition, MUD directors represent smaller constituencies than city, county and state officials. This allows them to be much more in touch with the needs and interests of the communities.

"Given this close connection, I believe that they are in an excellent position to provide meaningful input with regard to a proposed housing development.

"Towards that end, I recommend that you amend the proposed Rules to facilitate the notice and involvement of MUD directors.

"The second issue relates to those neighborhood

organizations eligible to provide meaningful comment on a proposed application. The proposed Rules require that only neighborhood organizations whose boundaries include the proposed development be given standing.

"This requirement excludes those organizations that may be in the surrounding areas, or even border the proposed development site.

"I believe that these neighborhoods would be just as affected by a proposed development as the one in which the project is to be located. To be sure, the placement of a multifamily development may affect the factors controlling the quality of life for communities located miles from the site.

"I recommend that the proposed Rules be amended to allow neighborhood organizations located at least two to three miles from the proposed development site, standing when providing measurable community input. I believe that this change would give other potentially affected communities a needed opportunity to provide input on a proposed development.

"Thank you for providing me with the opportunity to provide input on the proposed Rules. I would welcome the opportunity to discuss my suggestions with you in further detail. Representative Bill

Callegari."

MS. HULL: Thank you.

MS. ESPINOZA: And do you all need a copy of this?

MS. HULL: Yes. Could we have a copy of that?

MS. ESPINOZA: Yes. Who do I give it to? Oh --

MS. HULL: Thank you.

MR. GERBER: Yes. Please thank the Representative for his comments, and we would -- very much would welcome discussing them. I would just mention also, to our last speaker as well as to you, Ma'am, that one of the things that did come up at the Board meeting was the question, where in Katy has the City determined that affordable housing can go?

And where can tax credit properties appropriately be situated, because I think those who do developments, you know, in the greater Houston-Katy metropolitan area, I think would -- you know, would obviously choose to go where a community has set aside property and would like to, you know, to do -- you know, would like to fit into a community's strategy.

At the same time, it is hard, as I think we heard with -- in the case of Elrod Place, you know, when

someone goes on the market, identifies property, says, This property is zoned properly for commercial or multifamily use, and they choose to build a tax credit property, and things erupt.

And so I think you heard several Board members who said, very clearly to Katy, the City of Katy, the leadership in Katy, Tell us where affordable housing can be developed in that community.

Because there are clearly people who have workforce housing needs. And so I --

MS. ZOLLINGER: If you read that thing, there's a good idea in there. On --

MS. ESPINOZA: And I think an issue in the Katy area especially is, this lack of -- as working with the State Representative, we get notification of these projects --

MR. GERBER: Sure.

MS. ESPINOZA: -- but there are a lot of people, you know, for instance Kathi's, you know, HOA are very involved in what goes on, but there are other HOAs that are not.

And so residents go without notification, and they take offense when they do find out that this happened, and it's much more of an objection to the Rules,

versus --

MR. GERBER: Sure.

MS. ESPINOZA: -- to the proposed project. And they take that personally, and I think hopefully if these suggestions are, you know, taken into consideration, that would help to ease some of the tension that there is for the Katy area for low-income housing projects.

MR. GERBER: Well, I think we certainly can and should do more in terms of neighborhood notification --

MS. ESPINOZA: Uh-huh.

MR. GERBER: -- and I respect, certainly respect what you're saying, and we'll have -- and we'll take those comments to heart and give them every consideration, and continue the dialogue with the -- Representative.

It gets to the larger question though of, when you're -- you know, Houston doesn't zone. Much to the chagrin of some of our Board members. Katy does. And where is it zoned for affordable housing to go.

And that's not necessarily a State Representative issue, or a homeowner association issue. That squarely lies within the purview of your Mayor and Council.

So I guess you can go back to the question of,

Mayor of Katy and City Council of Katy, where do low-income working people who benefit from the tax credit developments all across the State of Texas, go to live in Katy?

MS. ESPINOZA: Yes, and that's what you'll see is, they don't get involved, it's always State Representative and KISD. And they're not there, so it's just kind of, how do we get them involved then --

MR. GERBER: Sure.

MS. ESPINOZA: -- with this? This is a suggestion, I guess.

MR. GERBER: We welcome the homeowner associations' leadership, the MUDs Districts' leadership, and the Representative's leadership in motivating the elected Mayor and City Council members to tell --

MS. ESPINOZA: Katy, it's okay --

MR. GERBER: -- the Department specifically where they've zoned and would feel would be an appropriate place for development of low-income, workforce housing using tax credit -- using the tax credit program that every other city in the State is able to take advantage of --

MS. ESPINOZA: And that -- okay. Thank you.

MR. GERBER: Sure.

MS. HULL: Thank you. Is there anybody else who would like to comment on the Qualified Allocation Plan?

(No response.)

MS. HULL: The next topic up for discussion are the Multifamily Bond Program Rules. This document establishes the 2008 rules for the Multifamily Bond program. The program issues tax-exempt and taxable bonds to fund loans to nonprofit and for-profit developers.

Would anybody like to comment on the Multifamily Bond Rules?

(No response.)

MS. HULL: The next topic up for public comment is the TDHCA HOME Program rule.

MS. GARCIA: This year, the HOME Division significantly updated the HOME Program Rule, primarily, the restructure of the Owner-Occupied Housing Assistance Program, which defines the loan process and the general administration of the Owner-Occupied program. Are there any comments on the HOME Rule?

(No response.)

MS. GARCIA: The next item is the Housing Trust Fund Program rules. This document establishes the 2008 Rules for the Housing Trust Fund, which is the only state-

funded housing program. It is available statewide and currently finances $3 million per year to the Texas Bootstrap Loan Program for low-income families.

The proposed changes maintain the flexibility of the program, and streamline processes to ensure the policies are consistent with other department programs.

Are there any comments on the Housing Trust Fund Program Rules?

(No response.)

MS. HULL: The Texas First-Time Homebuyer Program Rules. This program utilizes funding from tax-exempt and taxable mortgage revenue bonds; offers 30-year fixed-rate mortgage financing at below-market rates for very-low-, low-, and moderate-income residents purchasing their first home, or for residents who have not owned a home in the preceding three years.

Qualified applicants access funds by contacting any participating lender, who is then responsible for the loan application process.

(No response.)

MS. HULL: The next item up for public comment are the Compliance Monitoring, Accessibility Requirements, and Administrative Penalties Rules. This document establishes the policies and procedures related to TDHCA's

monitoring of multifamily developments financed through the Department.

Ms. Zollinger, you had mentioned, or in the written public comment, you mentioned the Compliance Monitoring Accessibility Requirements and Administrative Penalties Rules. Is there anything you'd like to add at this time?

MS. ZOLLINGER: Maybe just one thing.

(Pause.)

MS. ZOLLINGER: Just -- if there is found to be, you know, misdeeds on the part of the developers and their applications, that there be some severe banking sanctions or whatever you want to call it, so that they don't feel that they can do that in their applications, and that maybe that will end. That's all.

MR. GERBER: And thanks for that. And I would just add that that's one of the things we really take very seriously, at the Department, and that's why applications get terminated, and why people are no longer allowed to play in certain programs, if they intentionally provide fraudulent information to the Department, for their advantage.

It happens, but you know, one of the things you've mentioned is, sort the size of the application,

and, you know, I think that, you know, we certainly are trying to streamline our processes as well, to make them more readily understandable.

But they're large, complex deals; I mean, you're building major apartment complexes of, you know, 250 units, and, you know, we're talking about giving a taxpayer paid-for benefit, a federal benefit of tax credits. You know, oftentimes totaling up to, you know, to $12 million.

So there's a lot of information that comes out, and things do change in the course of the construction of a property, on the edges; they don't necessarily, you know, you know, change in the big concept, but they do change.

One of the things that these new rules do are -- is that they impose heavy penalties of, we want people to do what they say they're going to do.

And so from -- from, really from beginning to end, in this process. And, you know, we make folks certify. If they fail to, you know, if they say something that's inaccurate, you know, we, you know, we have a pretty heavy hand in terminating applications that -- where people submit wrongful information, and if they go too far, you know, we take the matter, you know, further

and disqualify them from participating in our process in future years.

Once they've built the developments, if they fail to live up to their commitments to the Department, and to the taxpayers who are paying -- providing them with a benefit, to serve low-income Texans, we now have the ability, thanks to some new State -- a new State law, that allows us to impose heavy penalties, up to $1,000 a day, on property owners and managers for failing to maintain properties, to maintain proper certifications, to -- for failing to do what they said that they were going to do.

And that extends over the life of their obligation to the Department, which can be, you know, 30 years.

So it's a significant penalty that we're imposing to prevent people from doing many of the things that I think, you know, many of us are most concerned about, which is, you know, having, you know, additional dilapidated apartment properties in communities, and doing that on the backs of low-income Texans.

I would just say that, you know, our product, one of the things that speaks well to -- TDHCA's product is in fact that compliance regime.

No one else is being -- you know, you go to an

apartment property, you know, you might pay -- you know, there's, you know, oftentimes not a criminal background check. T

here's oftentimes not a -- you know, an inspector that comes in, and is going to review, you know, your financial records, you know, on a yearly basis and do a desk review, and then come -- you know, and then is going to send actually send a physical inspector out to that property, to look at that property at least every three years, and more often if necessary if the property has been poorly maintained or there's some other circumstance that requires a more frequent inspection.

And so we -- you know, we're -- that just does not happen in general in the marketplace. And so we think that that speaks well of how we are trying to hold people accountable, and to make communities feel confident in the product that we're putting -- you know, putting out there to -- again, serve, you know, the workforce housing needs of the State.

MS. ZOLLINGER: But the most -- I think the most -- and I appreciate all that, and I think that's great, all that stuff's great.

But the most serious things that we brought to you that were so concrete, three separate attorneys who

are not in the same firm looked at, and the one attorney that wrote the paperwork that we sent to you --

MR. GERBER: Uh-huh.

MS. ZOLLINGER: -- you sent back and said, Not even whatever, and you have no recourse. We were just like, in awe.

MR. GERBER: I sent it back to you?

MS. ZOLLINGER: That was the stuff we brought at the hearing.

MR. GERBER: Well, let's talk afterwards --

MS. ZOLLINGER: Yes.

MR. GERBER: -- but I will tell you, as you know, they -- you know, they did not get tax credits --

MS. ZOLLINGER: Yes. No, I know --

MR. GERBER: -- and they're --

MS. ZOLLINGER: -- I mean, at the end of the day, it was --

MR. GERBER: -- you know, I think a collection of things --

MS. ZOLLINGER: -- but --

MR. GERBER: -- led to them not getting tax credits.

MS. ZOLLINGER: -- no, at the end of the day, it's great. But that's why I'm here. I just, you know --

MR. GERBER: Sure.

MS. ZOLLINGER: -- the process is, you know, we thought it was important enough to come back and --

MR. GERBER: Sure. And we're --

MS. ZOLLINGER: -- we're --

MR. GERBER: -- we'd like to work --

MS. ZOLLINGER: -- but --

MR. GERBER: -- and try to improve the process, if we can. I mean, that's important to us, because we, you know, we need neighborhoods to tell us, neighbors to tell us, you know, how a property is either not -- is properly being represented and where there is, you know, where there might be opportunity for improvements on amenities or other things that they've worked on with a developer, or likewise where things are not working well.

And our Board and our Staff and I, you know, I've been guilty of doing it myself. I mean, we tell developers to go back to working with neighborhoods to try to see if they can figure out a way to work through -- work through those issues.

The ast thing the Department wants to do is put property, you know, in a community that, you know, just does not want it. Unless you're dealing with just NIMBY issues. But --

MS. ZOLLINGER: Right.

MR. GERBER: -- in general, that's not the case.

MS. ZOLLINGER: And I appreciate that.

MR. GERBER: Yes. And --

MS. ZOLLINGER: And we told the homeowners that came with those complaints, We're not -- we will not put those things before -- you know.

MR. GERBER: And I appreciate that, and we'd love to work with you, and talk, you know, afterwards about, you know, what strategies we could employ as a Department, which is outside of the Rules, but in making sure that neighborhoods are, you know, the neighborhood's views are being better handled by Staff, so that your needs are met.

MS. ZOLLINGER: Thank you.

MR. GERBER: Sure.

MS. HULL: The TDHCA Underwriting, Market Analysis Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines, outlines the rules and guidelines related to TDHCA's evaluation of proposed affordable housing developments' financial feasibility and economic viability.

Any public comment on this item?

(No response.)

MS. HULL: Under the Legal Services Division, there are two Rules that have been proposed for public comment: The Providing Current Contact Information to the Department, and the Asset Resolution and Enforcement Rules.

I haven't received any witness affirmation forms for any public comment. Is there anybody who would like to state public comment at this time?

(No response.)

MS. HULL: Is there any public comment that I have missed, that you would like to comment? Any general comments?

(No response.)

MS. HULL: Seeing as how there are no -- there's no more official public comment, I'll go ahead and conclude the meeting. Thank you for coming out. And we'll be around to answer questions.

(Whereupon, at 6:44 p.m., the hearing was concluded.)

C E R T I F I C A T E

IN RE: State of Texas Consolidated Public Hearing

LOCATION: Houston, Texas

DATE: September 26, 2007

I do hereby certify that the foregoing pages, numbers 1 through 39, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

10/2/2007
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731