IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE INCLUSIVE COMMUNITIES PROJECT, INC.,	§	
Plaintiff,	§	
	§	Civil Action No. 3:08-CV-0546-D
VS.	§	
THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, et al.,	§	
Defendants.	§	

AMENDED JUDGMENT

I

In a memorandum opinion and order filed September 28, 2010, the court granted plaintiff The Inclusive Communities Project, Inc.'s ("ICP's") motion for partial summary judgment and denied defendants' motions for judgment on the pleadings and for summary judgment. The parties thereafter tried the balance of the case in a bench trial. In a memorandum opinion and order filed March 20, 2012, the court found in favor of ICP on its disparate impact claim under §§ 3604(a) and 3605(a) of the Fair Housing Act ("FHA"), and in favor of defendants on all other claims. In a memorandum opinion and order filed August 7, 2012, the court adopted a remedial plan for addressing the FHA violation. The court also filed a judgment on August 7, 2012. In a memorandum opinion and order filed today, the court grants in part and denies in part defendants' motion to alter or amend judgment or, alternatively, for new trial.

For the reasons set out in the memorandum opinions and orders filed September 28, 2010, March 20, 2012, August 7, 2012, and today, it is ordered and adjudged as follows:

II

As used in this amended judgment (hereafter "judgment"), the terms "TDHCA" and "defendants" mean, collectively, defendants Texas Department of Housing and Community Affairs and its Executive Director and board members in their official capacities. The term "Plan" means TDHCA's proposed remedial plan, attached to this judgment as Exhibit A. The term "QAP" means the Qualified Allocation Plan adopted by TDHCA under I.R.C. § 42(m)(1)(B), and Tex. Gov't Code Ann. § 2306.6702(a)(10) (West 2011). The term "LIHTC" means Low Income Housing Tax Credits awarded under a QAP.

III

TDHCA, its officers, agents, servants, employees, and attorneys, and all those in active concert or participation with it who receive actual notice of this judgment by personal service or otherwise, are enjoined from administering the LIHTC program in the Dallas metropolitan area in a manner inconsistent with the FHA.

IV

TDHCA shall, within a reasonable time after the entry of this judgment, implement the following affirmative actions concerning the awarding of 9% LIHTC (and, to the extent applicable, 4% LIHTC) in the Dallas metropolitan area:

A. include in the QAP as an additional below-the-line criteria the "Opportunity Index," as set forth in the Plan at 6-7;

B. include in the QAP the additional below-the-line criteria regarding the quality of public education and anti-concentration, and remove all other "Development Location" criteria, as set forth in the Plan at 7-8;

C. continue to include in the QAP a 130% basis boost for proposed developments in high opportunity areas ("HOAs");

D. continue to include in the QAP criteria for disqualifying proposed development sites that have undesirable features, as set forth in the Plan at 11-13, and incorporate the more robust process of identifying and addressing other potentially undesirable site features, as set forth in the Plan at 13-14;

E. promulgate by rule a fair housing choice disclosure that must be given to prospective tenants and maintain a website providing information as to tax-credit assisted properties, as set forth in the Plan at 18;

F. conduct an annual disparate impact analysis, as set forth in the Plan at 18-19;

G. provide a mechanism to challenge public comments that cause proposed developments to receive negative points, as set forth in the Plan at 19, and include in the QAP the additional two-point below-the-line criterion regarding support or neutrality from a neighborhood organization that previously opposed a development and an associated debarment rule, as set forth in the Plan at 19-20;

H. adopt a tie breaker, in the event of a tie in scoring a 9% application, that favors an application proposing development in an HOA; and

I. each calendar year, no later than 120 days after the TDHCA Board of Directors issues final commitments for allocations of LIHTC, file the annual report with the clerk of court, in accordance with the memorandum opinion and order filed today.

Nothing in this judgment precludes TDHCA from following its usual processes to include the Revitalization Index, as set forth in the Plan at 10-11, in the QAP.

V

The remedial plan adopted by this judgment shall be effective for a period of five years after the first annual report is filed. During this period, the court shall retain jurisdiction. At such earlier time, if any, that TDHCA or another party can demonstrate that, as to the Dallas metropolitan area, the remedial plan adopted by this judgment has ensured that no future violations of the FHA will occur and has removed any lingering effects of past discrimination, it may move the court to terminate all or specific provisions of this judgment and/or the remedial plan.

VI

The objections of intervenor Frazier Revitalization Inc. to the Plan, as adopted by this judgment as components of the remedial plan, are denied.

VII

Except for ICP's disparate impact claim under the FHA, ICP's claims against defendants are dismissed with prejudice. Except for the remedial relief included in this judgment, ICP's requests for remedial relief are denied. ICP may apply for an award of attorney's fees and non-taxable costs under Fed. R. Civ. P. 54(d).

VIII

Defendants shall bear their own taxable costs of court. ICP shall recover 50% of its taxable costs of court, as calculated by the clerk of court, from defendants and shall bear the remaining 50% of its own taxable costs of court, as calculated by the clerk of court.

Done at Dallas, Texas November 8, 2012.

SIDNEY A. FITZWATER
CHIEF JUDGE

JUDGMENT EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE INCLUSIVE COMMUNITIES PROJECT, INC.,	*	
	*	
PLAINTIFF,	*	
	*	
V.	*	
	*	
THE TEXAS DEPARTMENT OF	*	
HOUSING AND COMMUNITY AFFAIRS, AND	*	
MICHAEL GERBER,	*	**CIVIL ACTION NO. 3:08-CV-0546-D**
LESLIE BINGHAM-ESCARENO,	*	
TOMAS CARDENAS,	*	
C. KENT CONINE,	*	
DIONICIO VIDAL (SONNY) FLORES,	*	
JUAN SANCHEZ MUNOZ, AND	*	
GLORIA L. RAY,	*	
IN THEIR OFFICIAL CAPACITIES,	*	
	*	
DEFENDANTS.	*	

DEFENDANTS' PROPOSED REMEDIAL PLAN

This proposed Remedial Plan ("Plan") is submitted to the Court in accordance with the Memorandum Opinion and Order dated March 20, 2012. Certain clarifying remarks are provided to explain to the Court and to the Plaintiff why certain propounded ways to provide remedial measures are not being offered in this Plan. To the extent that some of these clarifying remarks relate to matters of public record which occurred after the closing of the record in these proceedings, Defendant Texas Department of Housing and Community Affairs (the "Department") is prepared to offer such support by way of affidavits of fact or sworn testimony as the Court may deem necessary.

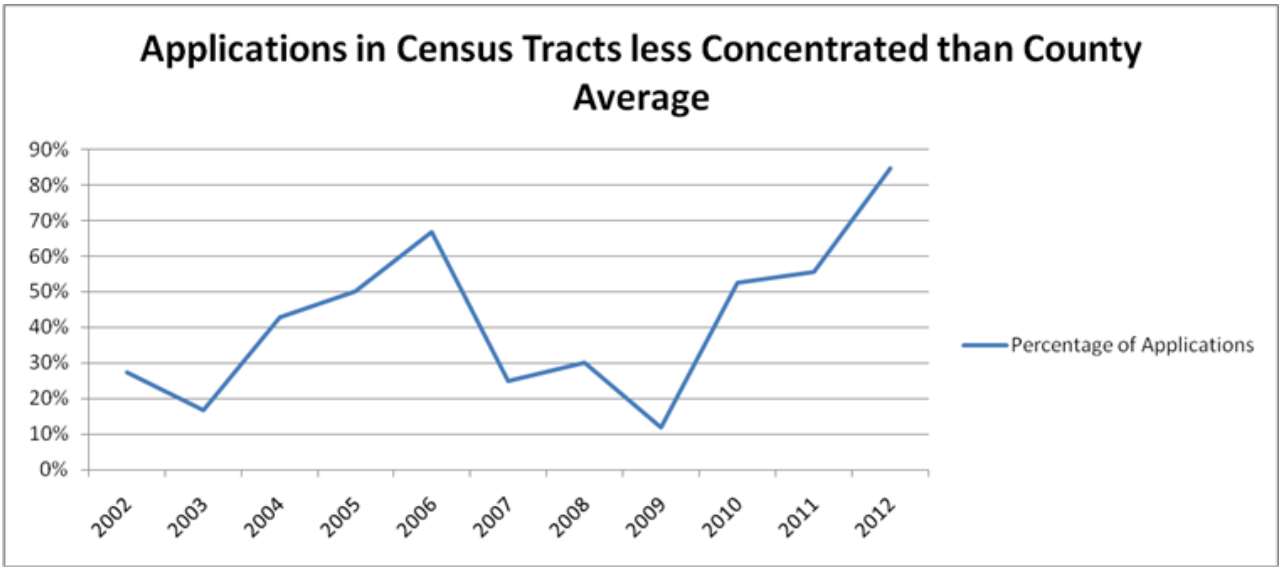
Introduction and Background

When the Qualified Allocation Plan (QAP) for 2012 (the "2012 QAP") was submitted to Governor Perry to approve, reject, or modify and approve in accordance with Tex. Gov't. Code, §2306.6724(b), Governor Perry approved the 2012 QAP with modifications. Those modifications clearly limited the use of discretion by the Department's Governing Board by curtailing the ability of the Department to make awards of forward commitments of low income housing tax credits (LIHTCs) and by narrowing the conditions under which that Governing Board could approve waivers under the 2012 QAP. That signal was consistent with the limited discretion provided by statute, as confirmed by opinions issued by the Office of the Attorney General. Thus, with regard to the proposal of this Plan, Department staff has endeavored to structure a proposal that strives to create a legally-supportable framework in which future QAPs can achieve the objectives of race neutral dispersion of LIHTC assisted developments within the remedial plan area by fashioning clear requirements, which are reasonably calculated to yield the intended result. Because this is a process with numerous variables, not least of which is the complex decision-making process that developers undergo in selecting their proposed sites, this Plan will require annual analysis and, as needed, recalibration.

In addition to the limitations on discretion in the 2012 QAP, that rule took a new and significant policy direction towards the development and intended successful implementation of measures to generate a greater level of tax credit-assisted development activity in high opportunity areas. The results to date of these strong actions, actions already taken that set the stage for significant high opportunity activity in the area covered by these proceedings, are publicly available. On the Department's website the current status report of the 2012 competitive 9% tax credit round shows that a significant number of competitive applications in

high opportunity areas have been submitted in Urban Region 3 with 16 of the applications located in such areas, many of which indicate they are top scoring applications.

The graphic below shows compellingly that actions already taken by the Department have materially changed the overall character of the competitive LIHTC round in 2012, promoting overwhelming interest in high opportunity areas.



In applicant-initiated appeals and requests for waivers the Board has taken seriously the limitations placed on its discretion and deliberated extensively in publicly conducted, transcribed meetings, leading to results that have closely followed the 2012 QAP. The Board has considered waivers only in truly exceptional and compelling circumstances where failure to grant the waiver would result in a clear failure to make the opportunity to compete available throughout the state.

It is the Department's belief that this proposed Remedial Plan offers meaningful improvements on the path already forged in the 2012 QAP and creates concepts which, if successful, can nurture and reinforce future QAPs. The Plan embraces the notion of providing maximum permissible incentives for areas that truly reflect the greatest opportunity, namely those areas with the highest income, lowest poverty, and best public education opportunities.

As set forth more fully in §12, captioned "Plan subject to statutory constraints," the Department operates under several layers of complex legal requirements, including the congressional statement in Internal Revenue Code §42(m) that the Department must give preference to "projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan…". Furthermore, the statutory schema for scoring of LIHTC competitive applications under QAPs is driven largely by TEX. GOV'T. CODE, §2306.6710, which has not been questioned in these proceedings and, presumably, must be adhered to in developing and administering future QAPs. Two of the key remedial tools proffered by the Plaintiff are the use of discretion, as discussed above, and the creation of set-asides. With respect to set-asides, it is open to question whether there is statutory authority for the Department to create set-asides in addition to those set forth in TEX. GOV'T. CODE, Chapter 2306. Even if, *arguendo*, creating set-asides were authorized, the suggestion to create a set-aside in the remedial area is problematic because that area is but a portion of a larger region pursuant to statute and to which the Department must regionally allocate LIHTCs.

As a result of these limitations and premises, the Department is proposing a Plan which focuses on: (1) according proposed developments located in defined high opportunity areas the greatest incentives allowed by state law; and, (2) according developments in Qualified Census Tracts (QCTs) that are part of true concerted revitalization plans co-equal incentives in order to provide the preference created by Internal Revenue Code §42(m). It is envisioned that the revitalization incentive will set a very high threshold, making it unlikely to yield a number of successful applicants in QCTs such that would perpetuate any discriminatory patterns found to have occurred unintentionally.

Plaintiff has requested that 4% non-competitive LIHTCs be addressed in this plan. Because of restrictions of federal law, states do not have the ability to designate the 130% basis boost for 4% LIHTC's, and therefore the only 4% LIHTC's eligible for the 130% basis boost are developments in federally designated QCTs and difficult to develop areas (DDAs).

The development and implementation of this Plan and the development of future QAPs in accordance with this Plan will be a matter to which the Department, in collaboration with Plaintiff, the Department's oversight bodies, and the public, will continue to work to develop more nuanced and effective ideas to achieve an optimal dispersion of LIHTC developments. In developing this remedial plan for the subject Dallas metro area, the Department intends to apply some of these concepts, or similar concepts to the remainder of the state; however, certain other regions will need specifically tailored plans due to differing demographics and other factors.

1. Use of discretion - waivers.

In approving the 2012 QAP, Governor Perry determined that the continuation of the ability to make awards of forward commitments was not desirable and that in exercising its discretion to waive any aspect of the QAP the Board should only grant waivers when doing so was necessary to further a purpose or policy enunciated in Tex. Gov't. Code, Chapter 2306.

2. Strengthened definition of a High Opportunity Area (HOA).

In the development of its 2012 QAP, the Department adopted a strengthened definition of a high opportunity area; and, under the scoring criterion of development location, provided 4 competitive points for a development proposing a location in a HOA. In order to qualify as being in an HOA, a development must be in a census tract that has BOTH a low incidence of poverty AND an above median income as well as being located in an area served by either recognized elementary schools or having a significant and accessible element of public

transportation. The Department currently anticipates that the highest four scoring 2012 applications in Urban Region 3 are located within the 5 county remedial area, are located in HOAs, and are within the attendance zones of recognized or exemplary rated elementary schools. The Department further anticipates awards in Urban Region 3 will be limited to no more than 6 applications due to the amount of 9% credits available for allocation.

In future QAPs, the Department is committed to continuing to strengthen the criteria for locating developments within HOAs. The Department will create a new "Opportunity Index" in order to incentivize applications to locate developments in the highest income and lowest poverty areas of the remedial area. At the same time, applicants that propose projects in areas of high opportunity that do not meet the most stringent criteria will still be incentivized, albeit to a lesser degree. The proposed Opportunity Index is reflected in the following chart. The highest "below the line" (scoring items ranking lower than statutorily required scoring items) point value will be assigned to the highest category within the Opportunity Index (actual point values may change commensurate with changes in the above the line statutory scoring criteria).

Points	Population Served	Poverty Factor	Income Factor	School Quality Factor
7 Points	General use	<15% rate for all individuals	Tract in top quartile of median household income for county or, for site in an Metropolitan Statistical Area (MSA), top quartile for MSA	"Exemplary" or "Recognized" elementary school
5 Points	General use	<15% rate for all individuals	Tract in top 2 quartiles of median household income for county or, for site in an MSA, top 2 quartiles for MSA	"Exemplary" or "Recognized" elementary school
5 Points	Any	<15% rate for all individuals	Tract in top quartile of median household income for county or, for site in an MSA, top quartile for	"Exemplary" or "Recognized" elementary school

			MSA	
3 Points	Any	<15% rate for all individuals	Tract in top quartile of median household income for county or, for site in an MSA, top quartile for MSA	N/A
1 Point	Any	<15% rate for all individuals	Tract in top 2 quartiles of median household income for county or, for site in an MSA, top 2 quartiles for MSA	N/A
Up to 7 Points	Any	The proposed development site is located in a QCT for which there is in effect a concerted revitalization plan (consistent with the elements described in §5. See Revitalization Index, §4, below.		

The Department will utilize data from the 5-year American Community Survey to determine a development site's qualification under the poverty and income criteria. For categories requiring an "Exemplary" or "Recognized" elementary school, the development site must be located within the school attendance zone that has the applicable academic rating, as of the beginning of the Application Acceptance Period, or comparable rating if the rating system changes by the same date as determined by the Texas Education Agency. An elementary attendance zone does not include elementary schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable.

The following additional factors, indicative of educational quality and opportunity or lack of affordable housing, will be incorporated as new below-the-line criteria:

a. Location within the attendance zone of a public school with an academic rating of "Recognized" or "Exemplary" (or comparable rating) by the Texas Education Agency (up to 3 points):

A. 1 points if it is both an elementary school, and either a middle school or high school; or

B. 3 points if it is an elementary school, a middle school, and a high school.

b. A municipality or, if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation. The application must also comply with all other anti-concentration provisions (2 points for general use/family or supportive housing; 1 point for elderly).

All other Development Location incentive criteria in the current QAP, such as incentives for developments in central business districts, will be removed in future QAPs, unless required by statute, in order to maintain high incentives to target HOAs.

3. 130% basis boost for transactions in HOAs.

Under the authority granted by the Housing and Economic Recovery Act of 2008, P. L. 110-289, the 2012 QAP offers a 130% basis boost for transactions assisted by 9% LIHTCs that are located in HOAs as defined in paragraph 2, above.

The Department will continue to include in its QAPs a 130% basis boost for applications that are intended to be located in HOAs. This requirement will not preclude or limit the Department's ability to offer a lawful basis boost in other appropriate instances. The authority for states to define criteria for a 130% boost for non-competitive 4% housing tax credit or tax-exempt bond developments is not available under §42 of the Internal Revenue Code.

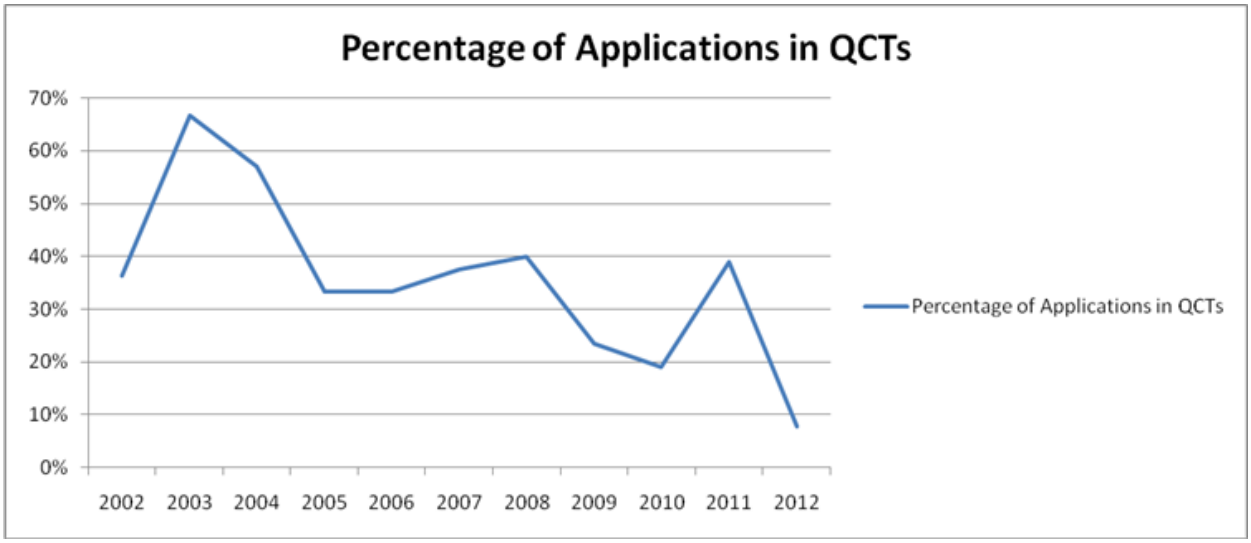
4. The remedial balance and the Revitalization Index.

The Opportunity Index clearly provides the greatest point incentives for HOA transactions that serve the general public, including families, that are also in areas of

significantly greater income, the top quartile. While a proposed transaction in a second quartile tract, a proposed transaction in the top quartile serving a targeted, albeit legally targeted, population rather than the general population, or even a proposed transaction in a second quartile tract serving an elderly population would be characterized as HOA, it is clear that in order to achieve the spirit and intent of the Plan, it is only that top quartile/general population plan should receive that greatest level of recognition for competitive enhancement. This Plan does propose a mechanism allowing for a similar prioritization for a proposed transaction in a qualified census tract (QCT) that is the subject of a concerted plan of community revitalization, as federally mandated by Internal Revenue Code (IRC) §42(m). The Department contends that failure to grant same preference for such transactions could be seen as inconsistent with federal law. However, the Department is well aware of the fact that a significant level of continuing activity in development in QCTs would be inconsistent with the remedial objectives of this Plan. Therefore, it is critical to note that in developing this language, Department strongly believes that the high thresholds established for revitalization plans will demand significant investments of time, analysis, and local commitments of funding for non-housing activity from an applicant. Accordingly, these points are unlikely to achieve in the natal cycle after approval of a Remedial Plan, a significant number of applications that can demonstrably earn the maximum points for being in a QCT AND having in place a revitalization plan meeting the substantive criteria proposed.

As the graphic below conveys, changes implemented in the 2012 QAP have clearly resulted in a virtual curtailment of QCT activity. While such a curtailment might be viewed as accelerating a catch-up to restore a more balanced distribution of assisted developments in areas

of all income levels, it would not be consistent with a prospective race neutral distribution or the congressionally expressed preferences set forth in the IRC.



Therefore, the Department believes that it is appropriate for an application in the area of greatest opportunity to be given coequal incentives with an application achieving the greatest revitalization purpose. Without this balance the Plan would in effect be forsaking that sector of the community in greatest need of this federal assistance. However, it is a generally acknowledged contention that tax credit developers have been able to marshal community support to validate the conclusions that they were meeting the objectives of IRC §42(m) possibly where meaningful non-housing revitalization activity was not occurring. In order to assure that such efforts involve meaningful substance and do not create an unregulated opportunity to characterize an effort as revitalization that may not be meaningful and substantive, the Department has developed a concept similar to the Opportunity Index to address revitalization.

Revitalization index:

Points	Population served	Criteria
7 points	Any	The proposed development site is located in a QCT in which there is in effect a concerted revitalization plan (consistent with the elements described in §5 and the

		non-housing costs, as reflected in the local government certified plan budget, exceed $25,000 per unit in the proposed development.
3 points	Any	The proposed development site is located in a QCT in which there is in effect a concerted revitalization plan (consistent with the elements described in §5 and the non-housing costs, as reflected in the local government certified plan budget, exceed $10,000 per unit but are less than $25,000 per unit.
2 points	Any	The proposed development site is not located in a QCT but there is in effect a concerted revitalization plan (consistent with the elements described in §5 and the non-housing costs, as reflected in the local government certified plan budget, exceed $10,000 per unit.

An application seeking to receive points under the Revitalization Plan must provide the plan and plan budget for review at pre-application and provide substantiation of the budget through submittal of a local government certified copy of the plan and budget supporting the claimed points at full application.

5. Strengthened criteria for disqualifying proposed sites that have undesirable features.

In the 2012 QAP, the Department included criteria for disqualifying proposed sites that have undesirable features, as follows:

> (13) Development Sites with negative characteristics in subparagraphs (A) - (G) of this paragraph will be considered ineligible. If Staff identifies what it believes would constitute an unacceptable negative site feature not covered by the those identified in subparagraphs (A) - (G) of this paragraph Staff may seek Board clarification and, after holding a hearing before the Board, the Board may make a final determination as to whether that feature is unacceptable. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TRDO-USDA are exempt. For purposes of this exhibit, the term 'adjacent' is interpreted as sharing a

boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the negative characteristic. If none of these negative characteristics exist, the Applicant must sign a certification to that effect. The negative characteristics include:

(A) developments located adjacent to or within 300 feet of junkyards;

(B) developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail (Developments located in a Central Business District are exempt);

(C) developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) developments where the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles;

(F) developments where the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) development is located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Government Code.

As a part of the Plan, the Department will continue to include the same or similar criteria in its QAPs for disqualifying proposed sites that have undesirable features. Additionally, the Department will incorporate a more robust process to identify and address other potentially undesirable site features in future QAPs. Under this criterion, an applicant proposing development of multifamily housing with tax credits must disclose to the Department and may obtain the Department's written notification of pre-clearance if the site involves any negative site features at the proposed site or within 1000 feet of the proposed site such as the following:

a. A history of significant or recurring flooding;

b. A hazardous waste site or a source of localized hazardous emissions, whether remediated or not;

c. Heavy industrial use;

d. Active railways (other than commuter trains);

e. Landing strips or heliports;

f. Significant presence of blighted structures;

g. Fire hazards which will increase the fire insurance premiums for the proposed site;

h. Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports.

The Department will develop a process for the efficient, timely resolution of the pre-clearance process. The Department may require that disclosure occur on an expedited basis, including but not limited to during the pre-application process. The Department will review these matters as disclosed to them and will either issue or withhold a pre-clearance. The standard to be employed will be that the pre-clearance will be withheld if one or more of the factors enumerated above are present at or within 1000 feet of the proposed site and are of a nature that would not be typical in a neighborhood that would qualify for HOA points under the Opportunity Index. An applicant providing disclosure will be encouraged to provide any plans for mitigation of the present undesirable feature(s), which may include a concerted community revitalization plan as described in §5.

In assessing disclosures the Department staff may, at its discretion, conduct a site inspection. Non-disclosure of any of the enumerated conditions if known or in the exercise of reasonable diligence could have been ascertained is a basis for withholding pre-clearance. Withholding or denial of pre-clearance may be appealed pursuant to the appeals process set forth in the applicable QAP.

With respect to the presence or absence of hazardous waste sites or emissions, an applicant may rely on the required Phase I Environmental Site Assessment.

6. Strengthening of incentives for applications in qualified census tracts where the housing is part of a concerted community revitalization plan.

Consistent with §42(m) of the Internal Revenue Code, the 2012 QAP offers incentives for applications in qualified census tracts and for applications in areas where the housing is a necessary component of a community revitalization plan. In future QAPs, the Department will strengthen the correlation between revitalization and development located in qualified census tracts and the requirements for establishing that true community revitalization is occurring and that affordable housing is a necessary part of the revitalization and will continue to provide appropriate incentives for affordable rental housing developments meeting such strengthened criteria.

Beginning with its 2013 QAP, the Department will establish a scoring criteria in which any application for low income housing tax credits located in a qualified census tract, as defined in §42(d)(5)(C) of the Internal Revenue Code, will be eligible for enhanced points, based on its location, if there is, as described below, a concerted revitalization plan that is in effect and to which the development will contribute.

A concerted community revitalization plan adopted by a municipality or county will be deemed to exist based on the following:

a. A community revitalization plan must have been adopted by the municipality or county in which the proposed development is intended to be located.

b. The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors to be considered include the following:

A. adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial, uses or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (*i.e.*, not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

B. presence of blighted structures;

C. presence of inadequate transportation;

D. lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

E. the presence of significant crime.

F. the presence, condition, and performance of public education; or

G. the presence of local business providing employment opportunities.

H. A municipality is not required to identify and address all such factors, but it must set forth in its plan those factors that it has identified and determined it will address.

c. The adopting municipality or county must have based its plan on the findings of the foregoing assessment and must have afforded the public opportunity to provide input and

comment on the proposed plan and the factors that it would address. To the extent that issues identified require coordination with other authorities, jurisdictions, or the like, such as school boards or hospitals, the adopting municipality should include coordination with such bodies in its plan and, to the extent feasible, secure their cooperation.

d. The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the community and address in a substantive and meaningful way the material factors identified. The adopted plan must specifically address how the providing of affordable rental housing fits into the overall plan and is a necessary component thereof.

e. The adopted plan must describe the planned sources and uses of funds to accomplish its purposes.

f. For any application located in a qualified census tract at the time of application to be eligible for enhanced points for this item based on its location, the revitalization plan must already be in place as evidenced by as certification that:

A. the plan was duly adopted with the required public comment processes followed;

B. that funding and activity under the plan have already commenced; and

C. the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

At the time of any award of Low Income Housing Tax Credits the site and neighborhood of any unit covered by the award and must conform to the Department's rules regarding unacceptable sites.

It is recognized that municipalities and counties will need to devote time and effort to adopt a concerted revitalization plan that complies with the requirements of this remedial plan. Therefore, for purposes of the first cycle of Low Income Housing Tax Credit awards following the issuance of an Order adopting a remedial plan, the The Board of the Department may, in a public meeting, determine that a revitalization plan substantively and meaningfully satisfies a revitalization effort, notwithstanding one or more of the above factors not having been satisfied.

7. Promulgation of fair housing choice disclosure.

The Department will promulgate by rule a fair housing choice disclosure in a form substantially equivalent to that set out in Attachment A, advising prospective tenants in writing of a website or other method of contact where they can obtain information about alternative housing and their rights under fair housing laws. The Department will maintain a website providing relevant information and identifying tax credit assisted properties searchable by ZIP code, city, and/or county. The Department will require that no initial lease be entered into for a unit assisted with low income housing tax credits unless that disclosure has first been provided to the prospective tenant.

8. Annual analysis of effectiveness of plan and continued development and enhancement of a policy of avoidance of over-concentration of low income housing units.

The Department will annually conduct an analysis of the effects of its prior QAP to determine if that QAP was contributing to disparate impact; and will take appropriate and lawfully permitted measures to amend the next and subsequent QAPs (beginning with its 2013 QAP), to avoid present or potentially developing disparate impact in the allocation of low income housing tax credits.

As each QAP is developed, the Department will analyze the distribution achieved under the previous QAP. It will take that analysis into account and use it to develop (within the measures available to the Department under applicable law) changes in the incentives, threshold requirements, and other factors to address any potential disparate impact and to achieve, prospectively, a broad and race neutral dispersion of low income housing tax credit assisted properties.

The QAP disparate impact analysis the Department performs will be made public. The public will be given opportunity to comment on the analysis, and the development of QAPs will also be carried out in a public meeting or hearing with opportunity for review and comment by the public, including the Plaintiff. In order to achieve consistency on a statewide basis, the Department will endeavor to apply the principles and objectives in this Plan on a statewide basis.

9. Review of challenged public input.

Any public comment that will be considered for negative scoring of applications, or as opposition to 4% non-competitive allocations, may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local governmental entity. If any such comment is challenged, the party that made the challenge will have to declare the basis for the challenge. The party that made the comment will be given seven (7) days to provide any support for the accuracy of its assertions. All such materials and the analysis of the Department's staff will be provided to a fact finder for a review and determination. The Department's determination will be final.

Additionally, applications in HOAs that receive statements of neutrality or support from a Neighborhood Organization that had provided a statement of opposition against a tax credit development in the last three years and for which the prior application was assigned the point

value associated with opposition, will receive an additional two (2) points. The Department will amend its debarment rules to provide that if an applicant is found to have worked to create opposition to their own or another's application in any application round, they shall be subject to debarment. An applicant against whom debarment proceedings have been initiated in good faith by the Department shall not be eligible for these points.

10. Tie breakers.

In the event of a tie in scoring, the tie breaker will be a preference for the developments that are located the greatest distance from the nearest development that is assisted by either 4% or 9% credits.

11. Transparency and openness of process.

The Department will continue to make available on its website proposed and final QAPs with comments and responses, applications, underwriting reports, application and award logs, scoring logs by subject, inventories, and appeal materials. Additionally, the Department will beginning with the 2013 competitive tax credit cycle, post market studies, Phase I Environmental Site Assessments and property condition assessments on its website. Nothing will require the disclosure of any item which has been found to be confidential as a matter of law.

12. Plan subject to statutory constraints.

This Plan acknowledges that as the Department considers and takes actions within its lawful powers, the implementation of such matters is an inherently deliberate and public process that takes time. Factors which must be addressed include adherence to the Texas Administrative Procedures Act; the Texas General Appropriations Act; Chapter 2306 of the Texas Government Code; and adherence to various federal requirements regarding the administration of other sources of funding impacting the Department's ability to address such matters. Subject to

adherence to all such requirements, as they may apply, the Department shall take appropriate actions within its power and control as provided for herein.

Nothing in this Plan shall in any way limit or affect the right of the State of Texas to enact laws; or obligate the Department to take any action not allowed by law; or require the Department to become obligated for funds that have not been appropriated to it for the purposes intended.

Respectfully submitted,

By: */s/ G. Tomas Rhodus*

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CERTIFICATE OF FILING AND SERVICE

I certify that on May 18, 2012, I electronically submitted the foregoing document with the clerk of the court for the United States District Court for the Northern District of Texas using the electronic case file system of the court, such that all counsel of record will be provided a "Notice of Electronic filing", and access to this document.

/s/ G. Tomas Rhodus

G. Tomas Rhodus

Attachment A
to
Remedial Plan

FAIR HOUSING CHOICE DISCLOSURE

You are about to enter into a lease agreement, which is a binding contract. Before you enter into your lease you should know that under fair housing laws you have certain basic rights, including the right to make certain choices as to where you will live. There are programs administered by a number of state and local institutions to provide assistance with respect to housing, including, but not limited to, affordable rental housing supported by low income housing tax credits, housing assisted with loans or grants from HUD programs and USDA programs, different types of vouchers, and public housing. The requirements under the programs may be different and not all types of housing options may be available where you would like to live.

Where you live has the potential to impact you and others in your household. For example, where you live may provide greater access to some (but not necessarily all) of the things listed below:

- Better schools
- Less crime
- Better public transportation
- Better access to health care
- Better access to grocery stores offering more healthy food choices
- Better proximity to family, friends, and organizations to which you might belong

There are other things that may be important to you. If you want to explore other housing options you can identify other affordable rental properties in your community at:

[hyperlink]

This link will also summarize your rights under fair housing laws and direct you to fair housing resources.