

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, *
 Leslie Bingham-Escareño, *
 Tomas Cardenas, *
 C. Kent Conine, *
 Dionicio Vidal (Sonny) Flores, *
 Juan Sanchez Muñoz, and *
 Gloria L. Ray in their official capacities, *
 Defendants. *

Civil Action No. 3:08-CV-00546-D

APPENDIX IN SUPPORT OF ICP’S RESPONSE
 TO DEFENDANTS’ PROPOSED REMEDIAL PLAN

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Summary of ICP's positions on the specific elements in TDHCA's proposed remedial plan:

1. Use of discretion - waivers.

ICP objects to this provision because it does not include the exercise of TDHCA's discretion as part of the remedy needed to bring TDHCA's allocation decisions into compliance with the Fair Housing Act.

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

ICP does not object to the definition of High Opportunity Area or the proposal to provide preference points set at the highest value of below the line points for applications for family units in the higher income and lower poverty tracts with quality educational opportunities.

ICP does object to the inclusion of applications for elderly units and for units in QCTs in the definition of the Opportunity Index and in the eligibility for the preference points for HOA locations.

3. 130% basis boost for transactions in HOAs.

ICP does not object to the inclusion of family units in HOAs as eligible for the 130% basis boost.

ICP does object to the inclusion of elderly units in HOAs as eligible for the 130% basis boost.

4. The remedial balance and the Revitalization Index.

ICP objects to the inclusion of this element in the remedial plan. Whether in the plan or not, the TDHCA standard for awarding any preference to developments in QCTs would not unnecessarily hinder the award of low income housing tax credits to developments that revitalize low-income areas, even if those developments will be located in predominantly minority areas.

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

ICP does not object to strengthened criteria for disqualifying proposed sites located in conditions of slum and blight.

ICP objects to the use of a 1,000 feet distance as the primary measure for the ineligibility of a site under the criteria. The standard should be based on a risk assessment.

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

ICP objects to the inclusion of this element in the remedial plan.

7. Promulgation of fair housing choice disclosure.

ICP objects to the use of this element until there are more units in predominantly Caucasian areas to be disclosed and until there is an agreed notice form and disclosure process.

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.

ICP agrees that an annual disparate racial impact analysis is an appropriate element of relief under the court ordered plan. The analysis should be done for the limited remedial area that is the focus of the case and include a disparate racial impact analysis of the results of both the 9% and 4% program allocation decisions. The parties can then make joint or separate requests for modification of the Court ordered remedial plan under the appropriate equitable principles. Fed. R. Civ. P. 60(b)(5).

ICP objects to the analysis and to the use of a policy of avoiding over-concentration of low income housing units if that refers to TDHCA's previous usage of concentration and over-concentration referring to whether additional tax credit units would adversely affect the market for recently approved tax credit units in the same area.

9. Review of challenged public input.

ICP does not object to the process in the first paragraph for challenging public comment that is contrary to findings of local government entities.

ICP objects to the process for debarment and to the proposed preference points set out in the second paragraph.

10. Tie breakers.

ICP does not object to the use of tie breakers that contribute to bringing TDHCA's allocation decisions into compliance with the Fair Housing Act.

ICP objects to the use of distance from an existing tax credit project as a tie breaker.

11. Transparency and openness of process.

ICP agrees that TDHCA's web site could make available the documents needed for monitoring TDHCA's compliance with the remedial plan.

12. Plan subject to statutory constraints.

ICP objects to the inclusion of compliance with state and federal requirements for the administration of the tax credit program in the remedial plan. Non-compliance did not cause the violation and compliance is not sufficient to remedy the violation.

ICP position on elements needed in remedial plan and not in TDHCA's proposal.

- A. Use the 4% program.
- B. Increased use of threshold criteria for the 4% and the 9% programs.
- C. Reform the point values of the above the line, add relevant below the line criteria and increase some of the below the line point values for relevant selection criteria.
- D. Include the use of TDHCA's discretion as a specific part of the remedial order.
- E. Include the Fair Housing Act remedy provisions as the governing principles for the remedy as applied using the Court's equitable authority to enforce and modify the plan.
- F. Make clear the coverage of the remedial plan extends only to the five county remedial areas.

2012-2013 Qualified Allocation Plan and Related Laws and Rules

Housing Tax Credit Program



Housing Tax Credit Program
2012 - 2013 Qualified Allocation Plan
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§50.1. General Program Information.

- (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. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in this chapter. 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. Notwithstanding the fact that these rules may not contemplate unforeseen situations that may arise, the Department would expect to apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.
- (b) General Rule of Construction. Any requirement to meet code, ordinance, etc. is deemed to be met if an appropriate waiver has been lawfully obtained and is being met.
- (c) Unless the context indicates otherwise, a reference to a Development Owner, Developer, General Contractor or Guarantor includes all Persons controlled by or under common Control with any such Person.

§50.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code, §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities), and repeated in the Tax Credit (Procedures) Manual.

- (1) **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) nine percent (9%) if the Development is proposed to be placed in service prior to December 31, 2013 and such timing is deemed appropriate by the Department or if the ability to claim the full 9% credit is extended by the U.S. Congress;
 - (ii) forty (40) basis points over the current applicable percentage for 70% present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or
 - (iii) fifteen (15) basis points over the current applicable percentage for 30% present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.
 - (B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:
 - (i) the percentage indicated in the Agreement and Election Statement, if executed; or
 - (ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or
 - (iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

- (2) **Application Acceptance Period**--That period of time during which Applications may be submitted to the Department.
- (3) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.
- (4) **Carryover Allocation**--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.
- (5) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §50.12(e) of this chapter (relating to Post Award Activities).
- (6) **Certificate of Reservation**--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.
- (7) **Central Business District or Downtown District**--The area designated by a city with a population of 50,000 or more as that city's Central Business District or Downtown Area and which includes one or more commercial buildings of ten (10) stories or more.
- (8) **Code**--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).
- (9) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (10) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.
- (11) **Development Site**--The area, or if scattered site, areas, on which the Development is proposed to be located.
- (12) **Economically Distressed Area**--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code, and has adopted and enforces the model rules under §16.343, Texas Water Code.
- (13) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.
- (14) **Existing Residential Development**--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.
- (15) **High Opportunity Area**--A Development that is proposed to be located in an area that includes, at a minimum, subparagraphs (A) and (B) of this paragraph along with either subparagraph (C) or (D) of this paragraph:
 - (A) in a census tract which has a median income that is above median for that county (as designated in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round) as of the first day of the Application Acceptance Period; and
 - (B) in a census tract that has a 15% or less poverty rate (as designated in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round) or, for Regions 11 and 13 with a 35% or less poverty rate;

- (C) within a half-mile of an accessible transit stop for public transportation if such transportation is available in the municipality or county in which the Development is located; or
 - (D) in an elementary school attendance zone that has an academic rating, as of the beginning of the Application Acceptance Period, of "Exemplary" or "Recognized," 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.
- (16) **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 chapter.
 - (17) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development.
 - (18) **Qualified Nonprofit Organization**--An organization that meets the requirements of §2306.6706 and §2306.6729 of the Texas Government Code.
 - (19) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participate (within the meaning of §469(h) of the Code) in the development and operation of the Development throughout the Compliance Period.
 - (20) **Single Room Occupancy (SRO)**--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.
 - (21) **State Housing Credit Ceiling**--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code.
 - (22) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are expected to be debt free or have no foreclosable or noncash flow debt. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.
 - (23) **Target Population**--For purposes of this Qualified Allocation Plan, the designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.
 - (24) **Tax Credit (Procedures) Manual**--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.

- (25) **Tax-Exempt Bond Development**--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.
- (26) **Transitional Housing**--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:
- (A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and
 - (B) is owned by a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common facilities.

§50.3. Program Calendar.

All documentation noted in this section must be submitted to the Department offices located at 221 E. 11th Street, Austin, TX 78701, by 5:00 p.m. (CST) by the date indicated. Any deadline not imposed by statute and including those not specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension of the deadline prior to the date of the original deadline. Any extension of non-statutory deadlines made after the original deadline or for longer than five (5) days must be requested pursuant to §50.16(a) of this chapter (relating to Waiver and Amendment of Rules). Extensions for 10% Test, Carryover and Cost Certification shall be made in accordance with §50.13(c) of this chapter (relating to Application Reevaluation).

2012 Program Year Due Date	2013 Program Year Due Date	Documentation Required
12/19/2011	12/17/2012	Application Acceptance Period Begins (Competitive HTC Only).
12/19/2011	12/17/2012	Pre-application Neighborhood Organization Request Date (Competitive HTC Only).
12/30/2011	12/28/2012	Pre-application Response to Neighborhood Organization Request Date (Competitive HTC Only).
01/10/2012	01/08/2013	Pre-Application Final Delivery Date (Competitive HTC Only).
01/20/2012	01/18/2013	Full Application Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, Rural Rescue, HOME or HTF Applications the request must be sent no later than fourteen (14) days prior to the submission of the Threshold Documentation.
02/23/2012	02/22/2013	Full Application Response to Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, HOME or HTF Applications

2012 Program Year Due Date	2013 Program Year Due Date	Documentation Required
		the response should be received no later than seven (7) days prior to the Application submission.
03/01/2012	03/01/2013	Full Application Delivery Date (Competitive HTC Only).
03/01/2012	03/01/2013	Quantifiable Community Participation (QCP) Delivery Date (Competitive HTC Only).
03/01/2012	03/01/2013	Unit of General Local Government Resolutions for Applications applying for TDHCA HOME funds and selecting §50.9(b)(5) points (must be submitted with Application).
03/01/2012	03/01/2013	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable). For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than 60 days prior to the Board meeting at which the tax credits will be considered. The 60 day deadlines are available on the Department's website.
03/02/2012	03/04/2013	Rural Rescue Application Submission Period (Ends 11/13/2012 and 11/12/2013 respectively).
04/02/2012	04/01/2013	Market Analysis Delivery Date (Competitive HTC Only).
04/02/2012	04/01/2013	Resolutions Delivery Date. (For Tax-Exempt Bond Developments all resolutions are due no later than 14 days prior to the Board meeting at which the tax credits will be considered).
05/01/2012	05/01/2013	Final Input from State Representative or State Senator Delivery Date (Competitive HTC Only)
Mid-May	Mid-May	Final Scoring Notices Issued (Competitive HTC Only).
06/13/2012	06/12/2013	Application Challenges Deadline (Competitive HTC Only).
Late June	Late June	Release of Eligible Applications for Consideration for Award in July (Competitive HTC Only).
Late July	Late July	Final Awards (Competitive HTC Only).
Mid-August	Mid-August	Commitments are Issued (Competitive HTC Only).
11/01/2012	11/01/2013	Carryover Documentation Delivery Date (Competitive HTC Only).
07/01/2013	07/01/2014	10% Test Documentation Delivery Date (Competitive HTC Only).

2012 Program Year Due Date	2013 Program Year Due Date	Documentation Required
12/31/2014	12/31/2015	Placement in Service Deadline (Competitive HTC Only).
Forty-five (45) calendar days prior to Board meeting	Forty-five (45) calendar days prior to Board meeting	Amendment Requests.
Thirty (30) calendar days prior to the deadline, as applicable	Thirty (30) calendar days prior to the deadline, as applicable	Extension Requests.
Five (5) business days after the Deficiency Notice date (without incurring point loss or penalty fee)	Five (5) business days after the Deficiency Notice date (without incurring point loss or penalty fee)	Administrative Deficiency Deadline

§50.4. Ineligible Applicants, Applications, and Developments.

- (a) The purpose of this section is to identify those situations, in which an Applicant, Application or Development would be considered to be ineligible under the Housing Tax Credit program based on, but not limited to, requirements in §42 of the Internal Revenue Code, Texas Government Code Chapter 2306 and other criteria considered important by the Department. If an Applicant or Application is determined by Staff to be ineligible based on subsections (b) and (c) of this section the Applicant will be sent a notice stating such ineligibility and will be given the opportunity to explain how they believe they are not ineligible. If while the Application is under review the General Contractor or Guarantor is determined by Staff or the Applicant to be ineligible under subsection (b) of this section, the Applicant will be allowed to replace the General Contractor or Guarantor provided such replacement is immediately identified and in place prior to the date by which a Commitment or Determination Notice would be issued provided that the request is made in sufficient time to allow Department Staff to conduct its previous participation review and any other necessary analysis. A proposed replacement and each Principal is required to provide the required previous participation forms.
- (b) **Ineligible Applicants.** An Applicant is ineligible if any Applicant, Development Owner, Developer, General Contractor, Guarantor involved with the Application:
 - (1) 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) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline; or
 - (3) 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 a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of:
 - (A) financial misconduct; or
 - (B) uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity; or

- (4) has any past due audits and 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 applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than thirty (30) days after Parts 5 and 6 of the Application are submitted; or (§2306.6703(a)(1))
- (5) 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, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Housing Tax Credits, the Chief of Compliance and Asset Oversight, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department or any person exercising such responsibilities regardless of job title; (§2306.6703(a)(2))
- (6) the Applicant proposes to replace in less than fifteen (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 thirty (30) years or more 100% 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% 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
 - (C) the applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or
 - (D) if the redemption of the applicable private activity bonds will occur in the first five years of the operation of the Development and complies with §429(h)(4), Internal Revenue Code of 1986:
 - (i) on the date the Certificate of Reservation is issued, the Texas Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under §1372.0321 of the Texas Government Code or, if applicable, in the same uniform state service region, as referenced in §1372.0231 of the Texas Government Code, that is served by the proposed Development; and
 - (ii) the applicable private activity bonds will be redeemed according to underwriting, if any, established by the Department; (§2306.6703)
- (7) 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 (§2306.6721(c)(2)); or
- (8) has breached a contract with a public agency and failed to cure that breach; or
- (9) 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; or
- (10) there is, involving the Application or Applicant, a violation of §2306.6733 of the Texas Government Code; or
- (11) has been found by the Board, after holding a hearing before the Board, to warrant ineligibility because of the circumstances surrounding a voluntary or involuntary termination of involvement in a rent or income restricted multifamily Development by a lender, equity provider, or any other owners or investors as a Principal during the previous ten (10) years, however designated, or any combination thereof or having had any litigation to effectuate such exit instituted, and continuing at the time of Application. The Department shall be

promptly notified by the Applicant of any such circumstances. The Applicant will provide the Department Staff with such information as it may reasonably request to evaluate the facts and circumstances surrounding such actual or threatened exit and prepare a report to the Executive Director. The information considered and addressed in the report will include, but not be limited to those identified in subparagraphs (A) - (E) of this paragraph. The Executive Director will make a determination, based on the report, whether facts and circumstances are present that would support the institution of formal proceedings to determine eligibility. Any determination of ineligibility under this provision shall be for a period that will not exceed five (5) years. No person shall be made ineligible under this provision except by formal action taken by the Department's Governing Board. Any such matter to be presented for final determination of ineligibility by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant ineligibility. The Executive Director's report and the Board's decision shall take into account all relevant factors including, but not limited to:

- (A) whether the Developer or Principal has invested more of its financial resources in the Development than it has received from or in connection with the Development;
 - (B) whether such Developer or Principal had the ability to address the facts and circumstances that ultimately led to the actual or threatened exit by other means or whether uncooperative parties or other facts and circumstances beyond its control prevented any other such resolution;
 - (C) the contributing or causative effect of circumstances beyond such Applicant's, Development Owner's, Developer's or Guarantor's control, such as significant changes in market conditions or a natural disaster;
 - (D) the compliance history of the Development during the time of the Applicant's, Development Owner's, Developer's or Guarantor's involvement; and
 - (E) whether such Developer or Principal disclosed to the Department the event of exit as part of the Certification in the current Application.
- (c) **Ineligible Applications.** The Department will terminate an Application for those issues identified in paragraphs (1) - (10) of this subsection. In addition to termination, the Department may debar a Person for one (1) year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines that any of the issues identified in paragraphs (1) - (8) of this subsection exist and the facts warrant debarment:
- (1) the provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission 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, General Contractor, or Guarantor or anyone that exercises common Control in the Development Owner, Developer, General Contractor or Guarantor, or any Affiliate that Controls one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with or has repeatedly violated the LURA or if such Material Noncompliance or repeated violation is identified during the Application review or the program rules in effect for such property as further described in Chapter 60 of this title (relating to Compliance Administration); or (§2306.6721(c)(3))
 - (3) the Applicant, Development Owner, Developer, General Contractor, or Guarantor or anyone that exercises common Control in the Development Owner, Developer, General Contractor, or Guarantor, or any Affiliate of such entity that is active in the ownership or Control 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
- (4) the Applicant or the Development Owner that exercises common Control of one or more tax credit properties in the state of Texas has failed to cure any fees described in §50.14 of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or
 - (5) an Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or exercises common 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 an Applicant or a Related Party, violates §2306.1113 of the Texas Government Code relating to Ex Parte Communication as further described in §50.7 of this chapter (relating to Application Process); or
 - (6) it is determined by the Department's Executive Director 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 of the Texas Government Code, or a section of Chapter 572 of the Texas Government Code, in making, advancing, or supporting the Application; or
 - (7) the Applicant, Development Owner, Developer, Guarantor, General Contractor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or
 - (8) the Applicant, Development Owner, Developer, Guarantor, General Contractor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid in accordance with the terms of repayment for the Development at the time of Carryover Allocation or Bond closing; or
 - (9) the Application is submitted after the Application submission deadline (time or date); has multiple Parts of the Application missing; is not bookmarked in accordance with the instructions in the Tax Credit (Procedures) Manual; or has a Material Deficiency as defined under §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities); or
 - (10) for Applications submitted under the State Housing Credit Ceiling, if more than 150% of the credit amount available in the sub-region is requested at the time of the original submission of the Application based on estimates released by the Department on December 1. The Department will consider the amount in the Funding Request of the Application to be the amount of housing tax credits requested.
- (d) **Ineligible Developments.** Those Developments identified in paragraphs (1) - (16) of this subsection are considered ineligible for funding under the Housing Tax Credit Program:
- (1) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code) 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;
 - (2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
 - (3) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

- (4) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such;
- (5) Any Development with any building(s) with four or more stories that does not include an elevator;
- (6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;
- (7) Any Development (excluding Supportive Housing Developments) proposed in a Central Business District with more than 70% one bedrooms and/or Efficiency Units or 70% two bedrooms or more than 20% three bedrooms. An Application may reflect a total of Units for a given bedroom size greater than these percentages to the extent that the increase is only to reach the next highest number divisible by four;
- (8) Any Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (9) A proposed Rehabilitation (excluding Reconstruction) of an Existing Residential Development that is more than forty (40) years old unless the property is either:
 - (A) to be rehabilitated with support of historic tax credits;
 - (B) to be done as adaptive reuse; or
 - (C) a Development that includes an architect's or engineer's statement confirming that the proposed rehabilitation will be structurally viable for its required affordability period, assuming customary ongoing maintenance;
- (10) Any Development located in an Urban Area involving New Construction, Reconstruction or Adaptive Reuse of Units (except for a Qualified Elderly Development, a Development proposed in a Central Business District, a Development composed entirely of single family dwellings, or Supportive Housing Developments) in which any of the designs in subparagraphs (A) - (D) of this paragraph 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, but they do apply to the multifamily dwellings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in subparagraphs (A) - (D) of this paragraph to the extent that the increase is only to reach the next highest number divisible by four:
 - (A) more than 30% of the total Units are one bedroom and/or Efficiency Units; or
 - (B) more than 55% of the total Units are two bedroom Units; or
 - (C) more than 40% of the total Units are three bedroom Units; or
 - (D) more than 5% of the total Units in the Development with four or more bedrooms;
- (11) Any Development which is intended to house seniors that is not consistent with the definition of a Qualified Elderly Development;
- (12) Any Development that is reasonably believed by Staff not to clearly meet the general public use requirement under Treasury Regulation §1.42-9 unless the Applicant has obtained a private letter ruling that the proposed Development is permitted;
- (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;
- (14) **Two Mile Same Year Rule.** Staff will not recommend an allocation in the same Application Round if the Developments are, or will be, located less than two linear miles apart as determined by the Department. This limitation applies only to communities contained within counties with populations exceeding one million. For purposes of this chapter, any two sites not more than two linear miles 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 Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio; (§2306.67021)
- (15) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department, based on the evaluation factors identified in the Site Evaluation form, augmented by any other inspections or other documented findings of the Department. The Department will advise the Applicant if it makes an initial finding that a proposed site is unacceptable and provide the applicant with a reasonable opportunity to address any identified concerns. If in the Department's reasonable judgment the Applicant is not able to address adequately the Department's concerns regarding the site, the Department Staff will issue a determination that the site is unacceptable. If not appealed in accordance with §50.10(c) of this chapter (relating to Board Decisions), this determination becomes final.
- (16) **Mandatory Development Amenities.** All New Construction, Reconstruction or Adaptive Reuse Units must provide each and all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless expressly identified as not required. (§2306.187) Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F) or (G) of this paragraph; however, access must be provided to a comparable amenity in a common area. Deviations for good cause, by which one or more of the foregoing will not be provided, must be approved prior to award and the request for such deviation must be included in the Application. The Executive Director may issue such approvals. Requests not approved may be appealed to the Board in accordance with §50.10(c) of this chapter. These amenities must be at no charge to the tenants.
- (A) All New Construction Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;
 - (B) Laundry Connections;
 - (C) Blinds or window coverings for all windows;

- (D) Screens on all operable windows;
- (E) Disposal and Energy-Star rated dishwasher (not required for TRDO-USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
- (F) Energy-Star rated refrigerator;
- (G) Oven/Range;
- (H) Exhaust/vent fans (vented to the outside) in bathrooms;
- (I) At least one Energy-Star rated ceiling fan per Unit;
- (J) Energy-Star rated lighting in all Units which may include compact fluorescent bulbs;
- (K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);
- (L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO Units in Supportive Housing Developments only); and
- (M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be 1.5 spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly.

§50.5. Site and Development Restrictions.

- (a) The purpose of this section is to identify specific restrictions on a proposed Development submitted under the State Housing Credit Ceiling or Tax Exempt Bond Developments, as applicable.
- (b) **Floodplain.** Any Development proposing New Construction or Reconstruction and located within the one-hundred (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 one-hundred (100) year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation (excluding Reconstruction) with the exception of Developments with existing and ongoing federal funding assistance from HUD or TRDO-USDA, will be permitted in the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain.
- (c) **Credit Amount.** (§2306.6711(b)) An Applicant may not request more than \$2 million in annual tax credits for any given Application. The Department shall not allocate more than \$3 million of tax credits in any given Application Round to any Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner). Tax-Exempt Bond Development Applications are not subject to this limitation and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. Competitive Housing Tax Credits approved by the Board during the current calendar year are applied to the credit cap limitation for the current Application Round. In order to evaluate this \$3 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. All entities that share a Principal are Affiliates. For purposes of determining the \$3 million limitation of tax credits, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
 - (2) provides "qualified commercial financing";
 - (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;
 - (4) receives fees as a Development Consultant or Developer that do not exceed 10% of the Developer Fee (or 20% for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater; or
 - (5) is acting as a General Contractor providing experience or is providing a required construction guarantee because of that role.
- (d) **Limitations on the Size of Developments.**
- (1) The minimum Development size will be 16 Units.
 - (2) Developments in Rural Areas involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units. Rehabilitation Developments (excluding Reconstruction) do not have a limitation as to the number of Units.
 - (3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round 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 restricted and 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 may exceed the maximum Unit restrictions.
 - (4) For Applications that are proposing an additional phase to an existing tax credit Development of the same type; that are otherwise adjacent to an existing tax credit Development of the same type; or that are proposing a Development of the same type on a contiguous site to another Application awarded in the same program year, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:
 - (A) the first phase of the Development has been completed and has maintained occupancy of at least 90% for a minimum six (6) month period as reflected in the submitted rent roll; or
 - (B) a resolution from the Governing Body of the city or county, in which the proposed Development is located, dated no more than one (1) year old from the date the Application is submitted. Such resolution must state that the Governing Body has reviewed a market study which supports the need for additional Units. The resolution must be submitted to the Department by the Resolution Delivery Date as indicated in §50.3 of this chapter (relating to Program Calendar); 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 combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.
- (e) **Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will evaluate Applications for a 30% increase in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection and Staff will recommend a 30% increase in Eligible Basis unless a 30% increase in Eligible Basis would cause the development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended (paragraph (2) of this subsection does not apply to Tax-Exempt Bond Applications).

- (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30% 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 QCT that has in excess of 30% 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 §42(d)(5)(C) of the Code, unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. The 11 digit census tract number must be clearly marked on the map. These ineligible Qualified Census Tracts are outlined in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round; or
- (2) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph (pursuant to the authority granted by H.R. 3221):
 - (A) any Rural Development;
 - (B) developments proposing entirely Supportive Housing and that such Development is expected to be debt free or have no foreclosable or non-cash flow debt;
 - (C) developments proposed to be located in a Central Business District as defined in §50.2(7) of this chapter (relating to Definitions);
 - (D) Developments proposed in a High Opportunity Area as defined in §50.2(15) of this chapter; or
 - (E) any non-Qualified Elderly Development not located in a QCT that receives local HOME, CDBG or other funds distributed or administered by the local jurisdiction provided that such funding amounts are equal to at least \$2,000 per Unit and is removed from Eligible Basis.

§50.6. Allocation and Award Process.

- (a) The purpose of this section is to identify the statutory set-asides for Applications competing under the State Housing Credit Ceiling, the methodology by which awards under the Ceiling are made as well as the general process for Housing Tax Credit Allocations.
- (b) **Regional Allocation Formula.** This formula, developed by the Department, establishes separate targeted tax credit amounts for Rural Areas and Urban 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 website. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban 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) and §2306.1115)
- (c) **Allocation 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) **Nonprofit Set-Aside.** 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 §42(h)(5) of the Code. Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified

- (5) **Procedures for Recommendation to the Board.** Consistent with subsection (d) of this section, 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 chapter (relating to Board Decisions).
- (6) **Limitation on Allocation.** No more than \$350,000 in credits will be committed from the current State Housing 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.

§50.8. Threshold Criteria.

The purpose of this section is to identify the mandatory requirements that must be submitted at the time of the original Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process, the Application will be terminated.

- (1) **Submission of the Application.** Includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)
- (2) **Governing Body Resolutions.** The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §50.3 of this chapter (relating to Program Calendar) and may not be more than one year old from the beginning of the Application Acceptance Period or for Tax-Exempt Bond Developments from the date Parts 1 - 4 are submitted to the Department.
 - (A) **Twice the State Average.** If the Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board) the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))
 - (B) **One Mile Three Year Rule.** If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (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))
 - (i) serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and
 - (ii) has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date Parts 1 - 4 are submitted); and
 - (iii) has not been withdrawn or terminated from the Housing Tax Credit Program;
 - (iv) 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 (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.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 Governing Body, of the Unit of General 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 clause (i) of this subparagraph.
- (v) In determining when an existing Development received an allocation 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 §50.6(f) of this chapter (relating to Allocation and Award Process).
- (C) **Developments 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:
- (i) the Development is in a Place whose population is less than 100,000;
 - (ii) the Applicant proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or
 - (iii) 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. These ineligible census tracts are outlined in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round.
- (3) **Rehabilitation Costs.** Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all Units and exterior deferred maintenance, at a minimum, and will involve at least \$25,000 per Unit in direct construction cost, also referred to as building costs in §1.32(e)(4) of this title (relating to Underwriting Rules and Guidelines), and site work. If financed with TRDO-USDA the minimum is \$19,000 and for Tax-Exempt Bond Developments, less than twenty-five (25) years old, the minimum is \$15,000 per Unit.
- (4) **Experience Requirement.** The purpose of the experience requirement is for someone in the Development to demonstrate they have experience in development. Evidence must be provided in the Application that meets the criteria as stated in subparagraph (A) of this paragraph. An Applicant may submit their experience documentation prior to the Application deadline and the Department will attempt to review and respond within thirty (30) days of submission regarding approval of the experience requirement. Experience of multiple parties may not be aggregated.
- (A) A Principal of the Developer, Development Owner, General Partner or General Contractor must establish that they have experience in the development of 150 units or more. Acceptable documentation to meet this requirement shall include:
- (i) an experience certificate issued by the Department in the past three (3) years; or
 - (ii) any of the items in subclauses (I) - (IX) of this clause:

- (iii) for Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.
- (D) **An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title):**
 - (i) dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (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 twelve (12) months old as of the first day of the Application Acceptance Period;
 - (ii) prepared in accordance with the §1.34 of this title; and
 - (iii) for Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as 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.

§50.9. Selection Criteria.

- (a) The purpose of this section is to identify the scoring criteria used in evaluating and ranking Applications submitted under the State Housing Credit Ceiling. The criteria identified below include those items required under Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code and other criteria considered important by the Department.
- (b) All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 130, 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. Unless otherwise stated, do not round calculations.
 - (1) **Financial Feasibility.** (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of (28 points) for this item. The purpose of this scoring item, as the highest prioritized item under Chapter 2306 of the Texas Government Code, is to provide an incentive for Applications based on the financial feasibility of the Development based on the supporting financial data as required in the Application. Receipt of feasibility points under this paragraph 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 all possible points under this paragraph. To qualify for the points, the supporting financial data in the Application must include:

- (A) a fifteen (15) year pro forma prepared by the permanent or construction lender:
 - (i) specifically identifying each of the first five (5) 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 (15) years proposed for all third party lenders that require scheduled repayment; and
 - (B) a statement in the term sheet, or other form deemed acceptable by the Department, indicating that the lender's assessment, based on considerations that included the Development's underwriting pro forma, finds that the Development will be feasible for fifteen (15) years.
 - (C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.
- (2) **Quantifiable Community Participation.** (§2306.6710(b)(1)(B); §2306.6725(a)(2)) The purpose of this scoring item is to encourage community participation from Neighborhood Organizations whose boundaries contain the proposed Development Site with consideration for those areas that may not have any Neighborhood Organizations. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development Site. 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 §50.8(9) of this chapter (relating to Threshold Criteria) if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. 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. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (13)(B) of this subsection and will be reviewed by Staff accordingly even if points under paragraph (13)(B) of this subsection were not selected in the Self-Scoring Form. If an Application receives points under subparagraph (B)(i)(II) or (III) of this paragraph then they may also qualify for points under paragraph (13)(B) of this subsection provided that documentation required under that scoring item is submitted.
- (A) **Submission Requirements.** Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §50.3 of this chapter (relating to Program Calendar). Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:
 - (i) state the name and location of the proposed single Development;
 - (ii) certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:
 - (I) the street and/or mailing addressee(s) for the signers of the letter;

- (II) day and evening phone number(s) for the signers of the letter;
 - (III) email addresses and/or facsimile number(s) for the signers of the letter and one additional contact for the organization; and
 - (IV) a written description and map of the organization's geographical boundaries;
- (iii) certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §50.3 of this chapter contain the proposed Development Site;
 - (iv) certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For purposes of this section, "persons living near one another" means two or more separate residential households. "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;
 - (v) include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or the county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative 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) a Neighborhood Organization must provide notice, of at least seventy-two (72) hours, to persons eligible to join or participate in the affairs of the organization.
 - (vii) while a formal meeting is not required, the organization is encouraged to hold a meeting, that complies with its bylaws, to which all the members of the organization are invited to consider and/or have a membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to meet with the Developer or Applicant to discuss the proposed Development; and
 - (viii) the form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process or any other request from the Department as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.
- (B) Scoring. The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.
- (i) The score awarded for each letter for this exhibit will be based on the following:
 - (I) support letters will receive (24 points). Support letters must make a direct statement of support. Support by inference (i.e. "The city supports the Development and we support the city" will not suffice; or

- (II) letters that do not meet the requirements of this section, letters that do not provide a reason for support or opposition, letters that are unclear even after correspondence with the Department or Applications for which no letters are received will receive a score of (14 points);
 - (III) applications for which no Neighborhood Organizations exist will receive a score of (18 points);
 - (IV) opposition letters (must state at least one reason for opposition) will receive (0 points);
 - (V) if an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.
- (ii) The Department may investigate a matter and contact the Applicant and Neighborhood Organizations to clarify if it is unclear whether the letter is a letter of support, opposition, or neutrality and to confirm compliance with procedural matters such as organization, existence, and being on record.
 - (iii) The Department highly values quality public input addressed to the merits of a Development. Input that identifies 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 Neighborhood 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. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, Staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, in and of itself, cause Staff or the Department to terminate consideration of the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.
- (3) **The Income Levels of Tenants of the Development.** (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) The purpose of this scoring item is to encourage deep income targeting with Units set aside for households at 30% and/or 50% of AMGI. Applications may qualify to receive up to (22 points) for qualifying under only one of subparagraph (A) or (B) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). 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) of the Internal Revenue Code.
- (A) For Developments proposed to be located in an area of the MSA of Houston, Dallas, Fort Worth, San Antonio or Austin that is not a Rural Area, an Application may qualify to receive:
 - (i) twenty-two (22) points if at least 40% of the Low-Income 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 Low-Income Units are at or below 30% of AMGI;
 - (ii) twenty (20) points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or
 - (iii) eighteen (18) points if at least 10% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI.
 - (B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph, an Application may qualify to receive:
 - (i) twenty-two (22) points if at least 20% of the Low-Income 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 Low-Income Units are at or below 30% of AMGI;
 - (ii) twenty (20) points if at least 30% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or
 - (iii) eighteen (18) points if at least 5% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI.
- (4) **The Size and Quality of the Units** (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)). The purpose of this scoring item is to promote interior features of the Unit that would serve to improve the quality of life of the resident. Applications may qualify to receive up to (20 points) under both subparagraphs (A) and (B) of this paragraph.
- (A) **Size of the Units** (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six (6) points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Supportive Housing Developments without meeting these square footage minimums only 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 in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.
 - (i) six-hundred (600) square feet for an Efficiency Unit;
 - (ii) seven-hundred (700) square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 600 square feet for a one Bedroom Unit in a Qualified Elderly Development;
 - (iii) nine-hundred-fifty (950) square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 750 square feet for a two Bedroom Unit in a Qualified Elderly Development;
 - (iv) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
 - (v) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.
 - (B) **Quality of the Units** (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 §1.1 of this title and as certified to in the Application. The amenities will be required to be identified in the LURA. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points) and Supportive Housing Developments will start with a base score of (5 points).
- (5) **The Commitment of Development Funding by a Unit of General Local Government or Governmental Instrumentality.** (§2306.6710(b)(1)(E)) The purpose of this scoring item is to

provide an incentive for local support for a proposed Development as demonstrated by the dedication of financial assistance, as described in this section, for the proposed Development. Applications may qualify to receive up to (18 points) under this paragraph. Funding must be from a Unit of General Local Government or a Governmental Instrumentality with jurisdiction, as established in accordance with statute, in the same county as or a contiguous county to the proposed Development.

(A) Submission Requirements. Evidence of the following must be submitted in accordance with the Tax Credit (Procedures) Manual.

- (i) The loans, grant(s) or in-kind contribution(s) must be attributed to the total number of Low-Income Units in the Development.
- (ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form.
- (iii) An Applicant may substitute any source in response to an Administrative Deficiency Notice or after the Application has been submitted to the Department.
- (iv) 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 for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. 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 §50.8(8)(A) of this chapter to qualify. The value of in-kind contributions may only include the time period as of the beginning of the Application Acceptance Period and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant §50.8(14)(D) of this chapter will be counted. 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.
- (v) 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 date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Governing Body of the Unit of General Local Government 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 Period ends and a resolution is submitted with the substitution documentation from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application.
- (vi) The granting of a new rental support or subsidy with a term of not less than fifteen (15) years; the funding for which is provided directly (not merely as administrator) by the UGLG or an instrumentality thereof.
- (vii) If the support is being provided in the form of a below market rate loan, the loan must be at least 100 basis points below the current market rate and have a term of at least three (3) years and origination fees (including other lender fees that are substantially similar) must be equal to or less than 2% of the loan

amount. A statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested must be submitted.

- (viii) Acceptable evidence submitted in the Application would include, by way of example and not by way of limitation, a resolution from the Unit of General Local Government, a letter from its Appropriate Local Official, or an executed agreement with the Unit of General Local Government or Governmental Instrumentality that will be providing the funding. If the funds have been applied for but not awarded, a letter from the funding entity indicating that an application has been received, funding is available and that award results will be announced by August 1 of the current program year is required in the Application. The Application must also include a statement from the Applicant that reflects the requirements of clause (vii) of this subparagraph. If, in the instance of a below market rate loan as provided for in clause (vii) of this subparagraph, the application has not yet been made, a letter from the Applicant setting forth when the application will be made must be submitted.
 - (ix) At the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide updated evidence of a commitment approved by the Governing Body of the Unit of General Local Government, or its designee or agent, for the Development Funding to the Department. If the funding commitment is not available as of the date the Department's Commitment is to be submitted, the Department will determine if the Application would have been infeasible or noncompetitive without the source of funding. The Commitment will be rescinded and the credits reallocated if the Department determines that the Application would have been infeasible or noncompetitive.
 - (x) Funding commitments from a Governmental Instrumentality will not be considered final unless the Governmental Instrumentality attests to the fact that any funds committed were not first provided to the Governmental Instrumentality 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 Governmental Instrumentality or subsidiary.
- (B) Scoring. Points will be determined based on the amount of funds committed to the Development on a per Unit basis, based on the total number of Low-Income Units in the Development.
- (i) A total contribution of at least \$1,000 (or \$500 for Rural Developments or Developments located in non-participating jurisdictions) per Low-Income Unit receives (12 points); or
 - (ii) A total contribution at least \$2,000 (or \$1,000 for Rural Developments or Developments located in non-participating jurisdictions) per Low-Income Unit receives (18 points).
- (6) **Community Support from State Representative or State Senator.** (§2306.6710(b)(1)(F); §2306.6725(a)(2)) The purpose of this scoring item is to allow the State Representative and State Senator the opportunity to express their support or opposition for proposed Developments whose boundaries are within their district. Applications may qualify to receive up to (16 points) or have deducted up to (16 points) for this item. Letters must be on the State Representative's or State Senator's letterhead, must be signed by the State Representative or State Senator, 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 the State Representative or Senator and must be submitted no later than the Input from State Senator

or Representative Delivery Date as identified in §50.3 of this chapter. Once a State Representative or State Senator submits a letter it may not be changed or withdrawn; therefore, it is encouraged that letters not be submitted earlier than the specified Delivery Date in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the letter is submitted. Support letters are (+16 points); neutral letters, or letters that do not specifically refer to the Development, will receive (0 points); Opposition letters (must state reason for opposition) will receive (-16 points). If one letter is received in support and one letter is received in opposition the score would be (0 points). A letter that does not directly express support but expresses it indirectly by inference, (i.e. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

- (7) **The Rent Levels of the Units.** (§2306.6710(b)(1)(G)) The purpose of this scoring item is to encourage deep rent targeting with Units set aside for households at 30% and/or 50% of AMGI that are in addition to those Units already designated under paragraph (3) of this subsection. Additionally, such Units must come from the 60% of AMGI Units that have not previously been designated under paragraph (3) of this subsection. Applications may qualify to receive up to (14 points) for this item under subparagraph (A) or (B) of this paragraph provided the Application has qualified for points under paragraph (3) of this subsection, relating to Income Levels of Tenants of the Development. An Application may qualify for points under this subsection by providing the additional Low-Income Units at 30% and 50% of AMGI (must round up to the next whole Unit, not less than one Unit):
- (A) for Developments proposed to be located in an area of the MSA of Houston, Dallas, Fort Worth, San Antonio or Austin that is not a Rural Area, an Application may qualify to receive:
 - (i) an Application may receive (2 points) for every 5% of Low-Income Units at rents and incomes at 50% of AMGI; or
 - (ii) an Application may receive (6 points) for every 2.5% of Low-Income Units at rents and incomes at 30% of AMGI.
 - (B) for Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph, an Application may qualify to receive:
 - (i) An Application may receive (2 points) for every 2.5% of Low-Income Units at rents and incomes at 50% of AMGI; or
 - (ii) An Application may receive (6 points) for every 1% of Low-Income Units at rents and incomes at 30% of AMGI.
- (8) **The Cost of the Development by Square Foot.** (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) Applications may qualify to receive (12 points) for this item. For this exhibit, costs shall be defined as Hard Cost plus 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 paragraph only, if a building is in a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors (Elevator Served Development) the NRA may include elevator served interior corridors. If the proposed Development is a Supportive Housing Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. 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 (12 points) if their costs do not exceed:

- (A) ninety-five dollars (\$95) per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title do not exceed \$80 per square foot) for Qualified Elderly and Elevator Served Development, single family design, and Supportive Housing Developments and Developments located in a Central Business District unless located in a "First Tier County" in which case their costs do not exceed \$97 per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title (relating to Underwriting Rules and Guidelines) do not exceed \$82 per square foot); or
 - (B) eighty-five (\$85) per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title do not exceed \$70 per square foot) for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed \$87 per square foot (and direct construction cost, also referred to as building costs in §1.32(e)(4) of this title do not exceed \$72 per square foot). The First Tier counties are identified in the Tax Credit (Procedures) Manual. 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.
- (9) **Tenant Services.** (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) The purpose of this scoring item is to provide professional tenant services, tailored for the tenant population that will enhance the quality of life for the residents of the proposed Development. Applications may qualify to receive up to (10 points) for this item. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §1.1 of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.
- (10) **Declared Disaster Areas.** (§2306.6710(b)(1)) The purpose of this scoring item is to provide an incentive for the development of affordable housing in declared disaster areas. Applications may receive (8 points), if by the Full Application Delivery Date as identified in §50.3 of this chapter or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared a disaster under §418.014 of the Texas Government Code.
- (11) **Additional Evidence of Preparation to Proceed.** The purpose of this scoring item is to provide an incentive for a level of due diligence by the Applicant and lender that ultimately should result in better Developments, better site selection, the expeditious construction of Units and less feasibility risk on the financial aspects of the Development. Applications may receive up to (7 points) under subparagraphs (A) - (C) of this paragraph.
- (A) Submission of a civil engineering feasibility study that includes, at a minimum, discussion of utility availability and fees, offsite requirements and costs, onsite requirements and costs, ingress and egress requirements, drainage and detention/retention requirements, discussion of required approvals, review process and general timing, and discussion of other necessary fees (permit, impact, drainage, tree, etc). All cost estimates to be as of the date of the study (3 points).
 - (B) Applicants may qualify to receive up to (4 points) by providing:
 - (i) for New Construction and Reconstruction, the submission of:

- (I) executed architectural and engineering contracts (including structural, Mechanical, Electrical, Plumbing, Civil and landscape) with architect or other Third-Party lead consultant certification showing all total fees (1 point);
 - (II) a survey or current plat, for the Development Site, as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas;
 - (-a-) Category 1A: Land Title Survey no older than 6 months prior to the beginning of the Application Acceptance Period (1 point); or
 - (-b-) Category 1B: Standard Land Boundary Survey no older than twelve (12) months prior to the beginning of the Application Acceptance Period (1 point);
 - (III) a Geotechnical Report with non-building specific soil borings and general recommendations regarding slab specifications (1 point);
 - (IV) a civil engineered site plan as by a Third-Party civil engineer, showing all structures, site amenities, parking and driveways, topography, drainage and detention, water and waste water utility distribution, retaining walls and any other typical or required items (1 point);
- (ii) for Rehabilitation Developments, the submission of:
- (I) Executed architectural and engineering contracts (including structural, Mechanical, Electrical, Plumbing, Civil and landscape as applicable) with an architect or other Third-Party lead consultant certification indicating total fees and all fees paid to date (1 point);
 - (II) Category 5: As-built survey (an existing survey dated within the last twelve (12) months of the beginning of the Application Acceptance Period qualifies) (1 point);
 - (III) in addition to the PCA independently identified scope of immediate work, the submission of the Applicant’s detailed schedule outlining the unit-by-unit specifications for all interior work and a detailed schedule outlining the building-by-building specifications; each including a line-item preliminary cost estimate, as if constructed as of the date of the Application submission, provided by the General Contractor (1 point);
 - (IV) Structural and Mechanical, Electrical, Plumbing reports prepared by licensed engineers reconciling all existing conditions to the scope of work identified in subclause (III) of this clause (1 point).
- (C) Applications (excluding Pre-applications) that were submitted in the preceding three (3) Application Rounds; however, they were not considered competitive enough to ultimately receive an award may receive up to (2 points). The current Application must include the same number of Units, some overlap of the original Development Site, and at least one Affiliate of the previous Applicant is an Affiliate of the current Applicant. Terminated Applications do not qualify for these points.
- (i) The Application, as submitted for the current Application Round, was previously submitted in one prior Application Round (1 point); or
 - (ii) The Application, as submitted for the current Application Round, was previously submitted in two prior Application Rounds (2 points).
 - (iii) Documentation must be submitted in the Application that includes the name, location, assigned TDHCA Identification Number and year of submission(s).
- (12) **Leveraging of Private, State, and Federal Resources.** (§2306.6725(a)(3)). The purpose of this scoring item is to provide an incentive for the leveraging of financial resources, when economically feasible, for a Development that proposes to serve a specified percentage of households at or below 30% of AMGI. Applications may qualify to receive (7 points) for a

Development located outside of a Qualified Census Tract and (6 points) for a Development located inside a Qualified Census Tract. To receive points under this item, the Development must have at least 5% of the total Units restricted for occupancy by households at or below 30% of AMGI. Funding sources used for points under paragraph (5) of this subsection may not be used for this point item. Division of the same source into separate loans or grants does not result in eligibility under this paragraph and paragraph (5) of this subsection. Multiple sources may be combined to qualify under this item.

- (A) If in the form of a loan, funding must be the primary source of debt with a first lien position and a minimum loan term of fifteen (15) years. Loans that are not first lien but are the largest source(s) of funding, not including equity generated from Housing Tax Credits, other federal tax credits, or funds used under paragraph (5) of this subsection also qualify. Origination fees cannot exceed 2% of the loan amount(s). Funding must be provided by a Third Party except when the funds are federally sourced and passed-through a Government Instrumentality. All loan funds qualifying for consideration under this section must provide an economic benefit over a market rate transaction (i.e. cannot buy down the rate by increasing upfront interest costs).
 - (B) Permanent grant funding not secured by a deed of trust may be used, provided the grant funding is the largest source of funding not including equity generated from Housing Tax Credits, other federal tax credits, or funds used under paragraph (5) of this subsection. Funding must be provided by a Third Party except when the funds are federally sourced and passed-through a Government Instrumentality.
 - (C) Examples of sources of funds that may qualify include those listed under clauses (i) - (viii) of this subparagraph. A Certification from the lender as of the date of such certification that the loan would meet this provision is required.
 - (i) HOPE VI;
 - (ii) Capital Grant Funds;
 - (iii) Community Investment Program (Federal Home Loan Bank);
 - (iv) Affordable Housing Program (Federal Home Loan Bank);
 - (v) HOME Investment Partnerships Program;
 - (vi) Community Development Block Grant (CDBG);
 - (vii) HUD-insured mortgage loans; or
 - (viii) other sources of grants or loans that provide for a 100 basis point savings over the market interest rate for comparable terms.
 - (D) Funding for ongoing operations, including rental subsidies, or other sources not directly offsetting the Total Housing Development Cost are not eligible for points under this paragraph. 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.
 - (E) 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 with terms meeting the requirements of subparagraphs (A) - (C) of this paragraph or a letter from the funding entity indicating that the application was received and that the terms for available funding meet the requirements of subparagraphs (A) - (C) of this paragraph.
 - (F) At the time of the Carryover Documentation Delivery Date, the Applicant or Development Owner must provide evidence of a commitment approved by the funding entity for the sufficient financing to the Department. An Applicant may substitute the qualifying source under this item between the time of Application and Carryover.
- (13) **Community Input other than Quantifiable Community Participation.** The purpose of this scoring item is to allow community and civic organizations active in the area that includes

the proposed Development the opportunity to express their support or opposition. If an Application was awarded (18 or 14 points) under paragraph (2) of this subsection, then that Application may receive up to (6 points) for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C) of this paragraph. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero (0) for this item.

- (A) An Application may receive (2 points) maximum of (6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located including, but not limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), 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; a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then (2 points) will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.
 - (B) An Application may receive (6 points) for a letter of support, from a property owners association created for a master planned community whose boundaries include the Development Site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.
 - (C) An Application may receive (6 points) for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §50.3 of this chapter, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.
 - (D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, Staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, in and of itself, cause Staff or the Department to terminate consideration of the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.
- (14) **Pre-application Participation Incentive Points.** (§2306.6704) Applicants 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. The purpose of this scoring item is to encourage participation in the pre-application process and prevent unnecessary filing costs by promoting transparency in the external assessment of competing Applications. Amendments to the Application subsequent to the award do not affect pre-application points if approved by the Board; however, the Board may take into consideration points received that would be lost as a result of the amendment. To be eligible for these points, the Application must:

- (A) be for the identical Development Site, or reduced portion of the Development Site based on the legal description provided at pre-application;
 - (B) have met the Pre-application Threshold Criteria;
 - (C) be serving the same Target Population as in the pre-application;
 - (D) be applying for the same 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 (9 points) 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 (14) of this subsection. The Application score used to determine whether the Application score is (9 points) greater or less than the number of points awarded at pre-application will also include all point losses under §50.7(b)(2)(A) of this chapter (relating to Application Process). An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:
 - (i) to request the pre-application points and have the Department cap the Application score at no greater than the (9 points) 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 (9 points) 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-Score Form.
- (15) **Developments in Census Tracts with Limited Existing HTC Developments.** (§2306.6725(b)(2)) The purpose of this scoring item is to encourage a de-concentration of housing tax credit Developments in census tracts, according to the Department’s Housing Tax Credit Site Demographic Characteristics Report for the current Application Round. Applications may qualify for up to (6 points) under subparagraph (A) or (B) of this paragraph.
- (A) If the proposed Development is located in a census tract in which there are no other existing HTC Developments that serve the same Target Population (4 points); or
 - (B) If the proposed Development is located in a census tract in which there are no other existing HTC Developments (6 points).
 - (C) Evidence of the census tract identifying the location of the proposed Development must be submitted in the Application.
- (16) **Development Location.** (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications (excluding those requesting funds from the At-Risk Set-Aside) may qualify to receive up to (4 points) under subparagraph (A) of this paragraph, with the exception of Qualified Elderly Developments which may receive up to (3 points) under subparagraph (A) of this paragraph, or (4 points) under subparagraph (B) of this paragraph or (1 point) under subparagraph (C), (D) or (E) of this paragraph. The purpose of this scoring item is to promote affordable housing development in traditionally underserved areas that allow access to a variety of services and socioeconomic opportunities that would not otherwise be readily accessible as well as meet legally mandated requirements. Evidence must not be more than six (6) months old from the first day of the Application Acceptance Period. Applicants must submit documentation in the form of a map of the defined area that includes the location of the proposed Development. If qualifying for being in a Colonia, the name of the Colonia must also be identified on the map. An Application may only receive points under one of the subparagraphs (A) - (E) of this paragraph.
- (A) The Development is proposed to be located in a High Opportunity Area as defined in §50.2(15) of this chapter (relating to Definitions), ((3 points) for Qualified Elderly Developments or (4 points) for all other Developments).

- (B) The Development is proposed to be located in a Central Business District as defined in §50.2(7) of this chapter. The Application must include a letter from the Appropriate Local Official confirming the location of the proposed Development and include the boundaries of the Central Business District (4 points).
 - (C) A Federal Enterprise Community, a Growth Zone or any other comparable community as designated by HUD, which are typically defined with census tract boundaries. Such locations may have previously been known as Empowerment Zones, Enterprise Communities or Renewal Communities (1 point); or
 - (D) An Economically Distressed Area as specifically designated by the Water Development Board as of the beginning of the Application Acceptance Period or a Colonia (1 point); or
 - (E) The Application is not receiving points under paragraph (5) of this subsection and the proposed Development will be located in an area supported by the Governing Body of the appropriate municipality or county containing the Development Site, as evidenced by a resolution or ordinance, submitted with the Application, supporting the location of the Development Site (1 point).
- (17) **Tenant Populations with Special Housing Needs.** (§42(m)(1)(C)(v)) Applications may qualify to receive (4 points) for this item. The purpose of this scoring item is to integrate special housing needs populations into traditional housing tax credit Developments. The Department will award these points to Applications in which at least 5% of the Units are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as 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. 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 twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-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 twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.
- (18) **Length of Affordability Period.** (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) The purpose of this scoring item is to provide an incentive for Applications that will extend the affordability period beyond the extended use period. Rehabilitation (excluding Reconstruction) Developments are not eligible for these points. Applications may qualify to receive up to (4 points). 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 thirty (30) years required in the Code may receive points as follows:
- (A) add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or
 - (B) add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).
- (19) **Site Characteristics.** Development Sites, including scattered sites, may qualify to receive up to (4 points) for this item. The purpose of this scoring item is to encourage affordable rental housing development in proximity to services and amenities that would be considered

beneficial to the tenants. Developments Sites must be located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least six (6) services. A site located within one-half mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has another form of transportation, including, but not limited to, 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 funding a comparable service, then this will be a requirement of the LURA. Only one service of each type listed in subparagraphs (A) - (O) of this paragraph will count towards the points. A map must be included identifying the Development Site and the location of the services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be under active construction, post pad by the date the Application is submitted.

- (A) Full service grocery store.
- (B) Pharmacy.
- (C) Convenience Store/Mini-market.
- (D) Department or Retail Merchandise Store.
- (E) Bank/Credit Union.
- (F) Restaurant (including fast food).
- (G) Indoor public recreation facilities, such as civic centers, community centers, and libraries.
- (H) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.
- (I) Medical offices (physician, dentistry, optometry) or hospital/medical clinic.
- (J) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).
- (K) Senior Center.
- (L) Religious Institutions.
- (M) Day Care Services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments).
- (N) Post Office, City Hall, County Courthouse.
- (O) Fire/Police Station.

(20) **Repositioning of Existing Developments.** Applications may qualify to receive up to (3 points) for this item. The purpose of this scoring item is to provide an incentive for Applications proposing the substantial Rehabilitation of an Existing Residential Development that meet the following criteria:

- (A) proposes Rehabilitation (including Reconstruction);
- (B) contains residential buildings originally constructed between 1980 - 1990;
- (C) the Application includes a scope of work (excluding Reconstruction) for the interior of the Units that includes an intentional lease-down or relocation of tenants off-site; and
- (D) the Development, as of the beginning of the Application Acceptance Period, has no income or rent restrictions recorded in the property records of the county.

(21) **Sponsor Characteristics.** The purpose of this scoring item is to encourage the material participation of Historically Underutilized Businesses relative to the housing industry in the development and operation of affordable housing. Applications may qualify to receive a maximum of (2 points) for this item. Qualifying under subparagraph (A) of this paragraph shall be worth (1 point) and qualifying under subparagraph (B) of this paragraph shall be worth (2 points). (§42(m)(1)(C)(iv))

- (A) The Applicant has submitted a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business

Guidelines for contracting with the State of Texas. The 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; or

- (B) there is a HUB as certified by the Texas Comptroller of Public Accounts, 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 Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period.
- (22) **Economic Development Initiatives.** (§2306.127) The purpose of this item is to provide an incentive for proposed Developments located in areas that have adopted initiatives that promote economic development. An Application may qualify to receive (1 point) under subparagraph (A) or (B) of this paragraph.
- (A) An economic development initiative adopted by the local government in which the Development Site is located, such as, but not limited to, a Tax Increment Financing (TIF) or Tax Increment Reinvestment Zone (TIRZ). Acceptable evidence will be a letter from the Appropriate Local Official certifying they have authority, stating the economic development initiative that is in place and certifying the date the initiative was adopted by the Unit of General Local Government.
 - (B) A Designated State Enterprise Zone.
- (23) **Community Revitalization (§42(m)(1)(C)(iii)) or Historic Preservation.** Applications may qualify to receive (1 point) under subparagraph (A) or (B) of this paragraph. The purpose of this scoring item is to provide an incentive for community transformation (including Qualified Census Tracts) by utilizing already existing capacities and providing long-term improvements to specific geographic areas as well as preserving federal or state designated historic buildings.
- (A) Any Development, regardless of whether located in a Qualified Census Tract that is part of a community revitalization plan. To qualify for these points a letter from the Appropriate Local Official must be submitted affirming that the Development is located within the specific geographic area covered by the plan, that the plan is not a Consolidated Plan or other Economic Development Plan or city-wide plan, the plan has been approved or adopted by ordinance, resolution, or other vote by the Governing Body with jurisdiction over the area covered by the plan (or, if such body has delegated that responsibility to another body by resolution, ordinance, or other vote, the body to which the responsibility was delegated) in a process that allows for public input and/or comment.
 - (B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity. The Applicant will be required to show proof of the Historic designation and Historic Tax Credits at Cost Certification.
- (24) **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)) The purpose of this scoring item is to allow for consideration for tenant or nonprofit ownership at the end of the Compliance Period. 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 in accordance with §2306.6726 and the Department's rules related to Right of First Refusal and Qualified Contract in §1.9 of this title (relating to Qualified Contract Policy).

- (c) **Scoring Criteria Imposing Penalties.** (§2306.6710(b)(2)) Staff will recommend to the Board a penalty of up to (5 points) for any of the items listed in paragraphs (1) and (2) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of penalties by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant penalties.
- (1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10% Test deadline (relating to either submission or expenditure).
 - (2) If the Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to §50.12(a) of this chapter (relating to Post Award Activities).
 - (3) No penalty points 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 TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.
 - (4) Any penalties assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§50.10. Board Decisions.

- (a) 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 other applicable Department 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, including good cause and the reasons for any decision that conflicts with the recommendations made by Department Staff. Good cause includes the Board's decision to apply discretionary factors. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))
 - (2) 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. The Board has established a rule for the materiality of noncompliance in Chapter 60 of this title (relating to Compliance Administration) to address noncompliance associated with the Development, Applicant or Affiliate.
- (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 the Commitment, 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 provided that it takes into account the need to assure adherence to regional allocation requirements. If at any time prior to the end of the Application Round, one or more Commitments expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment to Applications on the waiting list subject to the

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 electronic submission will be deemed given when sent. Notice by U.S. mail other than mail sent registered or certified shall be deemed given on the second business day after postmarking. All other notice shall be deemed given when logged as received by the Department. Notice not given in writing will be effective only if acknowledged in writing by the Department.

- (c) If required by the Department, Development Owners must comply with all requirements to use the Department's website to provide necessary data to the Department.

§50.16. Waiver and Amendment of Rules.

- (a) The Board, in its discretion, may waive any one or more of the rules provided herein if the Board finds that a waiver is necessary to fulfill the purposes or policies of Chapter 2306 of the Texas Government Code, as determined by the Board or if the Board finds that such waiver is in response to a natural, federally declared disaster that occurs after the adoption of this Qualified Allocation Plan. No waiver shall be granted to provide forward commitments. Any such waiver will be subject to all reasonable restrictions and requirements customarily applied by Staff including as applicable, but not limited to, underwriting, satisfactory previous participation reviews, scoring criteria and receipt of required Third Party approvals, including lender or investor approvals.
- (b) An Applicant may, at any time, make a specific written request for a waiver. Any waiver must be evidenced in writing consistent with Board approval and must expressly state the purposes or other good cause that the Board finds to justify the waiver. Waiver requests will be submitted to agency Staff, who will review it and place it on the next eligible Board meeting agenda. Staff shall have at least ten (10) days from the date on which it has received all information reasonably necessary for its consideration and evaluation of the request to make a recommendation to the Executive Director. The Staff recommendation must be reviewed by the Executive Award and Review Advisory Committee. Any recommendation to grant a waiver that would have the effect of changing the Applicant's score must be accompanied by an analysis of competing Applications and their scores. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development. Any waiver, if granted, shall apply solely to the Application and shall not constitute a modification or waiver of the rule involved. Any waiver must be evidenced in writing consistent with Board approval and may specify necessary restrictions, exceptions and other requirements. It is an Applicant's responsibility to initiate any waiver request in sufficient time to allow for it to be assessed and acted upon prior to the time it is actually needed.

§50.17. Department Responsibilities.

- (a) The Department shall make all required notifications pursuant to Chapter 2306 of the Texas Government Code.
- (b) In accordance with §§2306.6724, 2306.67022, 2306.6711, and §42(m)(1) regarding the deadlines for allocating Housing Tax Credits, paragraphs (1) - (7) of this subsection shall apply:
 - (1) regardless of whether the Board will adopt the Qualified Allocation Plan (QAP) annually or biennially, the Department, not later than September 30 of the year preceding the year in which the new plan is proposed for use, shall prepare and submit to the Board for adoption

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, *
Leslie Bingham-Escareño, *
Tomas Cardenas, *
C. Kent Conine, *
Dionicio Vidal (Sonny) Flores, *
Juan Sanchez Muñoz, and *
Gloria L. Ray in their official capacities, *
Defendants. *

Civil Action No. 3:08-CV-00546-D

DECLARATION OF ABIGAIL SELF

My name is Abigail Self and I am over the age of eighteen. I am employed as a researcher at Daniel & Beshara, P.C. The information in this declaration is based on several official government sources or other sources used commercially and generally accepted as accurate.

The highest ranked 9% 2012 cycle application in Urban Region 3 as of the TDHCA report contained in the TDHCA Board Book for the June 14, 2012, TDHCA Board meeting was not in the five county area of Collin, Dallas, Denton, Kaufman, or Rockwall counties.¹ That application was for the Harmon Villas development in Tarrant County. The second highest ranked application was in the five county remedial area and in what would be a High Opportunity Area under the Defendants' Proposed Remedial Plan. This application was for a location in Sunnyvale, Dallas County. The Sunnyvale application received 16 points for the local legislator's

¹ TDHCA determined the ranking first by score then by a tax credit per person tie breaker.

support letter. The third and fourth highest ranked applications were in the five county area but were not located in locations that would be High Opportunity Areas under the criteria in the proposed plan and were not in majority Caucasian census tracts. These were the Apple Grove Villas and 1400 Belleview (Central Business District) applications. There was not another application for family units in what would be a High Opportunity Area under the proposed remedial plan until 16th place. This was the Churchill at Northlake application.

<u>Rank</u>	<u>Name</u>	<u>City</u>	<u>County</u>	<u>Score</u>	<u>Remedial Area HOA</u>	<u>% Caucasian</u>
1	Harmon Villas	Fort Worth	Tarrant	219	No	59%
2	Riverstone Trails	Sunnyvale	Dallas	219	Yes	65%
3	Apple Grove Villas	Mesquite	Dallas	218	No	46%
4	1400 Belleview	Dallas	Dallas	218	No	42%
...
16	Churchill at NorthLake	Northlake	Denton	202	Yes	84%

Of the 21 9% program 2012 applications in TDHCA Region 3, only two applications were for family projects that were to be located in Caucasian areas in the five county area and that would also have met TDHCA’s proposed standards for High Opportunity Areas. The Churchill at Northlake application was outscored by elderly and non-High Opportunity Area applications that received local political support.

A number of the tracts eligible for High Opportunity Area status as defined by TDHCA’s poverty and median household income data requirements set out in the TDHCA proposed remedial plan are predominantly non-Caucasian census tracts. There are 241 census tracts in the remedial area eligible for High Opportunity Area status based on the 15% poverty and top quartile of median household incomes by tract data. 21 of these tracts, 9%, are more than 50% minority. There are 182 census tracts in the remedial area eligible for High Opportunity Area

status based on the 15% poverty and second highest quartile of median household incomes by tract data. 59 of these tracts, 32%, are more than 50% minority.

The 2012 9% program Quantifiable Community Participation (neighborhood organization input) and Senator-Representative letter logs to date shows the following patterns by race of the proposed location. 95 family unit applications received letters in support from the local State Representative or Senator. The census tract locations for these 95 applications averaged 44% Caucasian. Only four of the 95 applications with legislator support also received Quantifiable Community Participation (QCP) opposition letters. No family unit application in a census tract with less than 50% Caucasian population received a letter in opposition from the local State Representative or Senator. The two family unit applications that did receive letters in opposition from the local State Representative or Senator were in majority Caucasian census tracts. Both of these applications also received QCP opposition letters.

The 2011 9% application cycle showed a similar pattern. 76 family unit applications received letters in support from the local State Representative or Senator. The census tract locations for these 76 applications averaged 37% Caucasian. 59 of the 76 applications received only QCP support letters.. Only two applications received QCP opposition letters. The one family unit application that received a letter in opposition from a State Senator or Representative was in a 60% Caucasian census tract. That application also received two QCP letters in opposition. 44 elderly unit applications received letters in support from the local State Representative or Senator. The census tract locations for these 44 applications averaged 55% Caucasian. None of these applications received QCP opposition letters. 30 of these 44 elderly unit received QCP letters in support.

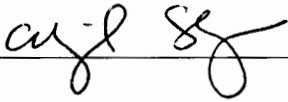
The demographic data for the information in this declaration was obtained from the U.S. Census official web site using the U.S. Census data service American FactFinder. The address or other location of the sites for specific developments proposed in applications to TDHCA for low income housing tax credits was obtained from those applications. Whether or not the application contained a census tract location, the U.S. Census 2010 census tract location was also obtained from the American FactFinder U.S. Census web site or the federal FFIEC web site address finder in order to check the accuracy of the census tract designation. If necessary for the determination of the census tract locations of proposed sites, other web based mapping programs such as Google Maps were used.

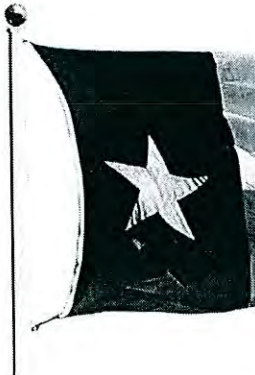
The information about the contents of the TDHCA 2011 and 2012 Quantifiable Community Participation letters and State Representative and Senator Support / Opposition letters was obtained from the TDHCA documents available on the TDHCA web site. The information about the 2012 9% program scores and application ranks was obtained from the TDHCA documents available on the TDHCA web site.

The statements in this declaration about sums and percentages are based on the demographics and other information as put into Excel spreadsheet form. The statements in this declaration about sums and percentages are based on the application of formulas for the simple arithmetical functions of sums and percentages. The accuracy of the information and the calculations was checked by at least two employees of Daniel & Beshara, P.C. The information in this declaration is an accurate summary of the voluminous data contained in the original source government reports.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June

14, 2012.

 _____



TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS

Building Homes. Strengthening Communities.

2012 Competitive Housing Tax Credit Application Certification

Mailing Address: P.O. Box 13941, Austin, TX 78711-3941

Physical Address: 221 East 11th Street, Austin, TX 78701

Development Name: Riverstone Trails

Development City: Sunnyvale

The undersigned hereby makes an Application to Texas Department of Housing and Community Affairs. The Applicant affirms that they have read and understand the 2012-2013 Qualified Allocation Plan (QAP), and in particular understands the requirements under §50.12(a) of the QAP, Adherence to Obligations, as well as Internal Revenue Code Section 42. By signing this document, Applicant is affirming that all statements and representations made in this document, including all supporting materials, are true and correct under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas. TEX. PENAL CODE ANN. §1.01 - §71.05 et seq. (VERNON 2003 & SUPP. 2007).

By: Kelly Holden
Signature of Applicant

Kelly Holden
Printed Name

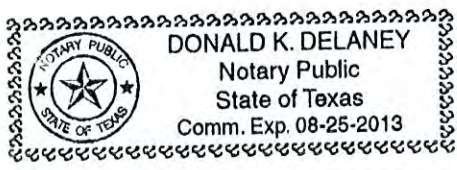
2/27/2012
Date

STATE OF: TEXAS
COUNTY OF: HAYS

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Kelly Holden whose name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27TH day of FEBRUARY 2012

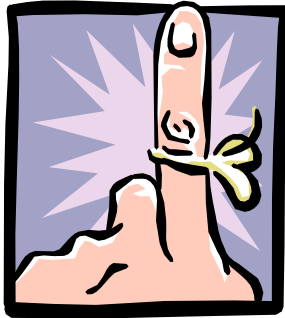
(Seal) Donald K. Delaney
Notary Public Signature



Notary Public, State of TEXAS
County of HAYS
My commission expires: 08-25-2013

RESOLUTIONS

PLACE ANY RESOLUTIONS BEHIND THIS TAB



**Riverstone Trails
Sunnyvale Texas
TDHCA #12221**

Resolutions

**Resolution submitted for
§50.9(b)(23) Community Revitalization or Historic Preservation**



Town of Sunnyvale

127 COLLINS ROAD, SUNNYVALE, TEXAS 75182
TELEPHONE (972) 226-7177 FAX (972) 226-1804
www.townofsunnyvale.org

February 14, 2012

Cameron Dorsey
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: Riverstone Trails
TDHCA # 12221

Dear Mr. Dorsey:

Attached for your use and review is our Resolution No. 12-06 that created a Community Revitalization Area within the Town of Sunnyvale. The proposed Riverstone Trails community is located within this Community Revitalization Area.

Please be advised that this plan is not a Consolidated Plan, or other Economic Development Plan, or a city-wide plan, and the plan was adopted by a resolution of the council members of the Town of Sunnyvale.

Sunnyvale looks forward to having the Riverstone Trails as a part of our community. If you have any questions or comments, please feel free to contact my office.

Sincerely,

Scott Campbell
Town of Sunnyvale

RESOLUTION NO. 12-06

A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS SUPPORTING THE ADOPTION OF A REVITALIZATION PLAN; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council recognizes the need for revitalization within a certain area located inside the corporate limits of the Town of Sunnyvale; and

WHEREAS, the Town Council encourages new housing and revitalization of a certain area; and

WHEREAS, This resolution has been presented for adoption at the regular meeting of the Town Council; and

WHEREAS, a Revitalization Plan has been prepared that conveys the Town's vision revitalizing industrial and commercial areas and housing that supports such revitalization; and

WHEREAS, it is anticipated that individual tracts of land will be designated from time to time as areas for such revitalization; and

WHEREAS, the Town has identified a tract hereinafter described that qualifies for such revitalization through development of quality housing units that embody urban design principles,

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS THAT:

SECTION 1. The Town hereby adopts the attached Revitalization Plan for the Town of Sunnyvale.

SECTION 2. All of the above preambles and recitals are found to be true and correct.

SECTION 3. This resolution shall be filed for permanent record in the office of the Town Secretary.

SECTION 4. The Town designates the real property described by metes and bounds in Exhibit A, which is attached hereto and incorporated herein, for inclusion in the area designated for revitalization by the Town's Revitalization Plan.

SECTION 5. This resolution shall be in full force immediately upon passage by the Town Council.

PASSED, APPROVED, and ADOPTED this the 23rd day of January, 2012

Jim Phaup, Mayor

ATTEST:

Scott Campbell, Town Manager/Assistant Town Secretary

EXHIBIT "A"
17.2519-Acre Tract of Land
Riverstone Addition, Tract 4
Sunnyvale, Texas

BEING a 751,494 square feet of a 17.2519 acre tract of land situated in the Timothy Cohwell Survey, Abstract No. 335, Sunnyvale, Dallas County, Texas, and being part of a tract of land conveyed to FC Properties One, Ltd. By deed recorded in Volume 96059, Page 1966. Deed Records of Dallas County and being more particularly described as follows:

BEGINNING at a found ½" iron rod for a corner in the west line of Planters Road (a 60' ROW) said point being S 00° 32' 20" E, a distance of 870.54' from a found ½" iron rod at the intersection of the southwest line of U.S. Highway 80 (a variable width ROW) with the west line of Planters Road, said point being the southeast corner of a called 2.8057 acre tract of land conveyed to the Town of Sunnyvale by deed recorded in Volume 97141, Page 2673. Deed Records of Dallas County, Texas and said point the beginning of a tangent curve to the left with a central angle of 45° 43' 06", a radius of 1030.00' a chord bearing of S 23° 23' 53" E and a chord distance of 800.24'.

THENCE, Southeasterly with the west and southwest line of Planters Road and along said curve an arc distance of 821.87' to a found ½' iron rod for a corner. Said corner being the northeast corner K-Mart Addition, an addition to the Town of Sunnyvale, Texas according to the plat thereof recorded in Volume 87118, Page 1904, Deed Records of Dallas, County, Texas.

THENCE, S 69° 33' 38" W, departing the southwest line of Planters Road and with the north line of the said K-Mart Addition, a distance of 1,237.31' to a found 1" iron rod for a corner. Said point being the northwest corner of the said K-Mart Addition and in the east line of Samuel Mesquite Park as recorded in Volume 105, Page 419, Probate Minutes of Dallas County Court, Texas.

THENCE, N 00° 16' 05" W, a distance of 735.29' to a found ¾" iron rod for a corner. Said point being the southwest corner of a called 7.697 acre tract of land conveyed to Elizabeth R. Motley Living Trust by instrument #92-4551-P, Probate Minutes of Dallas County Court, Texas

THENCE, N 89° 29' 46" E, a distance of 672.07' to a found ½" iron rod for a corner. Said point being the southwest corner of the above said Town of Sunnyvale tract.

THENCE, N 89° 22' 30" E, with the south line of the said Town of Sunnyvale tract a distance of 250.90' to the Point of Beginning.

**TOWN OF SUNNYVALE
REVITALIZATION PLAN**

INTRODUCTION

This document is a plan framework that conveys a schematic vision for Sunnyvale with some strategic planning.

GOALS and OBJECTIVES

1. Achieve a balanced and diverse mix of housing and businesses throughout the Town that will encourage new construction, and the expansion of growth of new businesses and industry.
2. Encourage the growth of new industry in both business parks and areas that are conducive to industrial development.
3. Promote the growth of new business throughout the Town.
4. Promote high-quality, public development projects that can serve as demonstrations of appropriate urban design principles.
5. Encourage new housing developments that incorporate energy efficient designs and the latest planning concepts.

SUMMARY OF SOURCES AND USES OF FUNDS

Describe all sources of funds and total uses of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Commitment Letters and Development Cost Schedule). Where funds such as tax credits, loan guarantees, bonds are used, only the proceeds going into the development should be identified so that "sources" match "uses."

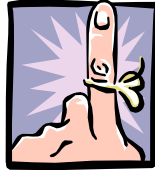
Development Name: Riverstone Trails

Development City: Sunnyvale

Funding Description	Construction Period		Permanent Period					Financing Participants
	Loan/Equity Amount	Interest Rate (%)	Loan/Equity Amount	Interest Rate (%)	Amort	Term	Syndication Rate (\$)	
DEBT								
Conventional Loan	\$11,485,000	6.50%	\$2,855,000	6.500%	30	15		Bank of Oklahoma - 1st Mortgage
Other (Please Describe)								
Other (Please Describe)								
Third Party Equity								
HTC Syndication Proceeds	\$1,161,484		\$11,614,838				\$0.88	Raymond James
Other (Please Describe)								
Grant								
Local Government Grant	\$200,500		\$200,500					City of Sunnyvale - Fee Waiver
Other (Please Describe)								
Deferred Developer Fee								
Deferred Developer Fee	\$79,662		\$79,662					VCZ Development
Other (Please Describe)								
Other								
Please Describe								
Please Describe								
Please Describe								
Please Describe								
TOTAL SOURCES OF FUNDS	\$ 12,926,646		\$ 14,750,000					
TOTAL USES OF FUNDS			\$ 14,750,000					

FINANCING NARRATIVE & TERM SHEETS

Place Financing Narrative and Term Sheets for all sources of financing behind this tab



FINANCING NARRATIVE

SUNNYVALE RIVERSTONE TRAILS APARTMENTS, LP SUNNYVALE, TEXAS

Equity financing will be provided by the sale of Housing Tax Credits in the estimated amount of \$11,614,838. *Raymond James Tax Credit Funds, Inc. (RJTCF)* has agreed to purchase the credits at a rate of \$0.88 per credit. A commitment letter is included within the application.

The equity will be made in three (3) installments as follows:

1. \$1,161,484 (10%) at the Closing of the Limited Partnership
2. \$9,291,871 (80%) at Construction Completion
3. \$1,161,484 (10%) at Stabilized Operations

Interim Construction Financing will be provided by *Bank of Oklahoma*. Interim Construction amount is \$11,485,000 during construction and lease-up phases. A commitment letter is included within the application.

Permanent Financing will be provided by *Bank of Oklahoma*. The permanent loan is in the amount of \$2,855,000. A commitment letter is included within the application.

Funding in the amount of \$79,662 will be supplied by *VCZ Development, LLC* in the form of a deferred developer's fee. These funds have been committed by the developer.

The *Town of Sunnyvale* has committed to a waiver of development and construction fees in the estimated amount of \$200,500. It is the intention of the *Town of Sunnyvale* to stimulate development of this type; the Town will not receive funding for the waivers.

CERTIFICATION OF NOTIFICATIONS (ALL PROGRAMS)

Development Name: Riverstone Trails

Development City: Sunnyvale

Pursuant to §50.8(9) of the 2012-2013 QAP and/or other applicable Rules, evidence of notifications includes this sworn affidavit and the *Public Notifications Information Form*. All Applicants, or persons with signing authority, must complete each Part below, as applicable:

Part 1. Must accurately check below if a Pre-Application was submitted:

- I (We), Kelly Holden certify that:
 - 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, and no additional notification was required at Application, or
 - A Pre-Application was submitted for this same Application and satisfied the Department’s review of Pre-Application Threshold, but all required entities were re-notified as required by §50.8(9)(A) and/or other applicable Rules, because I (we) 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%, an increase of greater than 10% for any given level of AMGI, a change in the Target Population, or the change of an elected official. As applicable, all changes in the Application have been made on the *Public Notifications Information Form*. I (we) certify that the notifications are not older than 3 months from the first day of the Application Acceptance Period for Competitive HTC Applications as required under §50.8(9)(A).

Part 2. Must accurately check all appropriate boxes below if a Pre-Application was not submitted or if the Pre-Application did not satisfy the Department’s review of Pre-Application threshold:

- I (We), _____ certify that:
 - all required requests for Neighborhood Organizations pursuant to §50.8(9)(A)(i) and/or other applicable Rules, were made in the format required in the Neighborhood Organization Request template by January 20, 2012, or for HOME, Housing Trust Fund, Tax Exempt Bond and Rural Rescue Developments no later than 14 days prior to the submission of the Threshold documentation.
- I (We), _____ certify that:
 - No reply letter was received from the local elected officials by February 23, 2012 (or for HOME, Housing Trust Fund, Tax Exempt Bond and Rural Rescue Developments by 7 days prior to the submission of the Application), and/or
 - A response was received from the local elected officials on or before February 23, 2012, (or for HOME, Housing Trust Fund, Tax Exempt Bond and Rural Rescue Developments by 7 days prior to submission of the Application) and the response indicated that the local elected officials know of no neighborhood organizations, and/or
 - A response was received from the local elected officials on or before February 23, 2012, (or for HOME, Housing Trust Fund, Tax Exempt Bond and Rural Rescue Developments by 7 days prior to submission of the Application) and I have notified those neighborhood organizations as required by and §50.8(9)(A)(ii)(I) and/or other applicable Rules, and/or
 - I have knowledge of other neighborhood organizations on record with the city, state or county whose boundaries contain the proposed Development Site and have notified those neighborhood organizations as required by §50.8(9)(A)(ii)(I) and/or other applicable Rules, and/or
 - I know of no neighborhood organizations within whose boundaries the Development is proposed to be located and/or
 - The local elected officials referred to me (us) to another source, and I (we) requested neighborhood organizations from that source. If a response was received, those neighborhood organizations were notified as required by §50.8(9)(A) and/or other applicable Rules; and

CERTIFICATION OF NOTIFICATIONS (ALL PROGRAMS) (cont.)

Development Name: Riverstone Trails Development City: Sunnyvale

Part 2 continued

All neighborhood organizations that were notified are correctly listed on the *Public Notifications Information Form* and all notifications were made in the format provided in the template, *Public Notifications Format (Written)*.

I (We) _____ certify that:
in addition to all of the required neighborhood organizations, the following entities were notified in accordance with §50.8(9)(A)(ii) and/or other applicable Rules. The notifications were in the format provided in the template, *Public Notifications Format (Written)*. All of the following entities were notified and are correctly listed on the *Public Notifications Information Form*:

- Superintendent of the school district containing the Development;
- Presiding officer of the board of trustees of the school district containing the Development;
- Mayor of any municipality containing the Development;
- All elected members of the Governing Body of any municipality containing the Development;
- Presiding officer of the Governing Body of the county containing the Development;
- All elected members of the Governing Body of the county containing the Development;
- State senator of the district containing the Development; and
- State representative of the district containing the Development.

While not required to be submitted in this Application, I have kept evidence of all notifications made and this evidence may be requested by the Department at any time during the Application review.

I (We) _____ certify that:
the notifications are not older than 3 months from the first day of the Application Acceptance Period for Competitive HTC or not older than 3 months for Volume 3 submissions for HOME, Housing Trust Fund, Tax-Exempt Bond and Rural Rescue Developments as required under §50.8(9)(A).

Part 3. Applicant must certify to the following (competitive HTC only):

I (We) Kelly Holden certify that:
no Neighborhood Organizations exist for which this Application would be eligible to receive points under §50.9(b)(2)(B)(i) of the QAP.

By: *Kelly Holden*
Signature of Applicant/Development Owner

Kelly Holden
Printed Name of Applicant/Development Owner

2/27/2012
Date

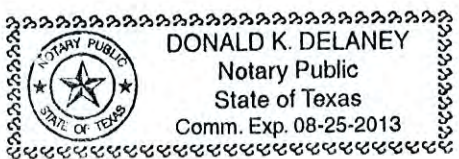
STATE OF: TEXAS
COUNTY OF: HAYS

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Kelly Holden whose name is signed to the foregoing statement, and who is known to be one in the same, has acknowledged before me on this date, that being informed of the contents of this statement, executed the same voluntarily on the date same foregoing statement bears.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this

27TH day of FEBRUARY 2012.

Donald K. De Laney
Notary Public Signature



Notary Public, State of TEXAS
County of HAYS
My commission expires: 08-25-2013

Competitive HTC Application Self-Score Form

Instructions: Complete the following form and indicate all points requested for this Application. All evidence as required by §50.9(b) of the 2012 QAP must be submitted as outlined in the Application Submission Procedures Manual.

Development Name: Riverstone Trails

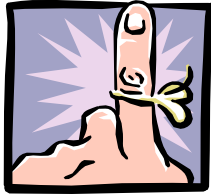
City: Sunnyvale

§50.9(b)	Point Category	Points Requested
(1)	Financial Feasibility (28 points max)	28
(2)	Quantifiable Community Participation (Points Not Requested in Self Score)	N/A
(3)	The Income Levels of Tenants of the Development (22 points max)	22
(4)(A)	Size of the Units (6 points max)	6
(4)(B)	Quality of the Units (14 points max)	14
(5)	The Commitment of Development Funding by Units of General Local Government (18 points max)	18
(6)	Community Support from State Representative or State Senator (points not requested in self score)	N/A
(7)	The Rent Levels of the Units (14 points max)	14
(8)	The Cost of the Development by Square Foot (12 points max)	12
(9)	Tenant Services (10 points max)	10
(10)	Declared Disaster Areas (8 points)	8
(11)	Additional Evidence of Preparation to Proceed (7 points max)	7
(12)	Leveraging of Private, State, and Federal Resources (7 points maximum)	7
(13)	Community Input other than Quantifiable Community Participation (points not requested in self score)	N/A
(14)	Pre-application Participation Incentive Points (6 points)	6
(15)	Developments in Census Tracts with Limited Existing HTC Developments (6 points maximum)	6
(16)	Development Location (4 points maximum)	4
(17)	Tenant Populations with Special Housing Needs (4 points)	4
(18)	Length of Affordability Period (4 points maximum)	4
(19)	Site Characteristics (4 points maximum)	4
(20)	Repositioning of Existing Developments (3 points maximum)	0
(21)	Sponsor Characteristics (2 points maximum)	2
(22)	Economic Development Initiatives (1 point)	1
(23)	Community Revitalization or Historic Preservation (1 point)	1
(24)	Developments Intended for Eventual Tenant Ownership- Right of First Refusal (1 point)	1
Total Points Requested:		179

(NOTE: Points added or deducted pursuant to §§50.9(b)(2), (6) and (13) are not included in this calculation.)

COMMUNITY INPUT OTHER THAN QUANTIFIABLE COMMUNITY PARTICIPATION

Place any letters from community and civic organizations for this point request behind this placeholder tab



PLANTERS ROAD PROPERTY OWNERS ASSOCIATION, LLC

127 N. Collins Road
Sunnyvale, TX 75182
(972) 226-7177

February 24, 2012

Cameron Dorsey
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, Texas 78711-3941

RE: Letter of Support
Riverstone Trails
Sunnyvale, Texas
TDHCA No. 12221

Dear Mr. Dorsey:

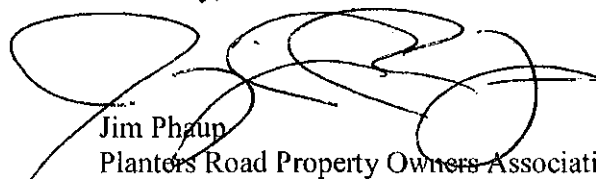
The Planter's Road Property Owner's Association, LLC was created to encompass the various property types and proposed land uses of the Planter's Road master planned development. Since the uses vary between housing and light industrial, a structure needed to be put in place to give control the planning and quality of the property to be ultimately developed.

This association does not appear to meet the guidelines of the Texas Housing and Community Affairs for a Neighborhood Organization because it does not currently have individual homeowners living within its boundaries.

The Riverstone Trails, which is proposed to be a 96-unit quad-style community is within the boundaries of the Planter's Road Property Owner's Association, LLC and will abide by the rules of the association.

The Planter's Road Property Owner's Association, LLC does hereby give its full support to The Riverstone Trails application to the TDHCA and hope that your staff will look favorably on their request.

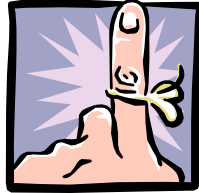
Sincerely,



Jim Phaup
Planters Road Property Owners Association

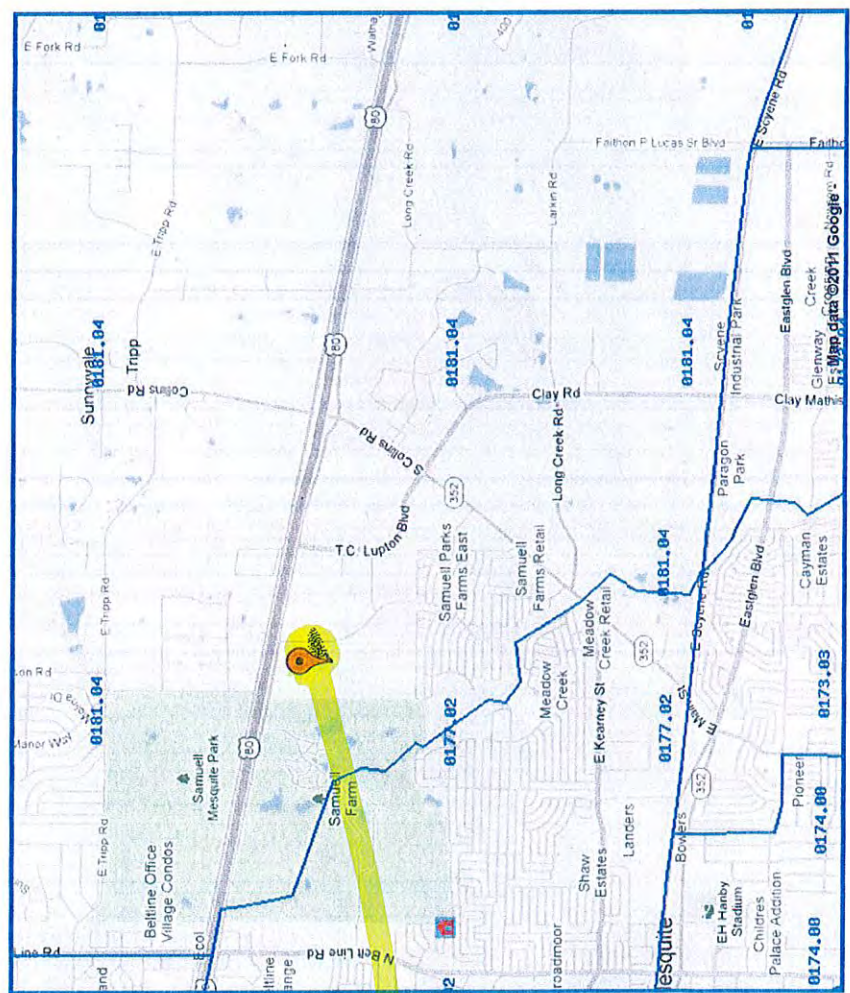
DEVELOPMENT LOCATION

Place evidence for these points behind this placeholder tab. Read the Multifamily Applications Procedures Manual for detailed information regarding the evidence required.



Qualified Census Tract Information

Full Tract Number: 48113018104
 Status (2010-2011): Not Qualified
 Past Qualifications: None
 County: Dallas
 State: Texas
 Poverty Rate: 3.90%
 Households below Income Limit: 13.10%



SEARCH

Map options - Clear/Reset

Address : sunnyvale, texas Search

- SELECT LAYERS TO BE DRAWN**
- 14 Current Zoom Level
 - Show Tracts Outline (Zoom 11+)
 - Show LIHTC Projects (Zoom 11+)
 - Color Qualified Tracts

CENSUS TRACT QUALIFICATIONS

- Tract Outline
- Qualified Census Tracts (2010-2011)

Version 5.0

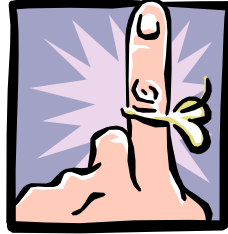
High Opportunity Area - \$50.2(15)

The following data provides information required to determine if a Development Site is located in a High Opportunity Area at \$50.2(15). The Columns labeled "Tract Poverty %" indicate whether the poverty rate for that Census Tract. One column indicates the rate for "Families" and the other for "Individuals." If a tract has under a qualifying poverty rate (below 35% in Regions 11 and 13 or below 15% in all other areas of the state) for either "Families" or "Individuals," the tract will be deemed to have met this criterion of the High Opportunity Area definition. The Column labeled "Tract MHI > County MHI" identifies whether a Census Tract has a Household Median Income that is higher than the Household Median Income for the County. This column or the "Tract MFI > County MFI" column, which uses Family Median Income data can be used to satisfy a criterion of the definition. The Poverty and Median Income factors are part of the High Opportunity Area definition. Applicants are encouraged to review the definition as the presence of other characteristics is required for eligibility as a High Opportunity Area.

The poverty data and median income data is from the 2005 to 2009 ACS. This data will require a Census Tract number based on the 2000 Census which may be different from the tract number under the 2010 Census. Instructions for identifying both tract numbers is provided on the Applications section of the Housing Tax Credit webpage.

Geography ID	Census Tract	Total Population from Poverty Table	Population in Poverty	Tract Poverty % (Individuals)	Total Families from Poverty Table	Families in Poverty	Tract Poverty % (Families)	Tract Median HH Income	County Median HH Income	Tract MHI > County MHI	Tract Median Family Income	County Median Family Income	Tract MFI > County MFI
48113018104	Census Tract 181.04, Dallas County, Texas	5,622	416	7.3995%	1512	154	10.1852%	\$ 83,805	\$ 47,059	Yes	\$ 96,750	\$ 52,655	Yes

Place evidence described in the Multifamily Applications Procedures Manual behind this placeholder tab.





Town of Sunnyvale

127 COLLINS ROAD, SUNNYVALE, TEXAS 75182
TELEPHONE (972) 226-7177 FAX (972) 226-1804
www.townofsunnyvale.org

February 14, 2012

Cameron Dorsey
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: Riverstone Trails
TDHCA # 12221

Dear Mr. Dorsey:

Attached for your use and review is our Resolution No. 12-06 that created a Community Revitalization Area within the Town of Sunnyvale. The proposed Riverstone Trails community is located within this Community Revitalization Area.

Please be advised that this plan is not a Consolidated Plan, or other Economic Development Plan, or a city-wide plan, and the plan was adopted by a resolution of the council members of the Town of Sunnyvale.

Sunnyvale looks forward to having the Riverstone Trails as a part of our community. If you have any questions or comments, please feel free to contact my office.

Sincerely,

Scott Campbell
Town of Sunnyvale

BOARD MEETING OF MAY 10, 2012

J. Paul Ozer, Chair



Tom Gann, Vice-Chair
Leslie Bingham Escareño, Member
Lowell Keig, Member
Juan Muñoz, Member
J. Mark McWatters, Member

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING**

A G E N D A

**10:00 a.m.
May 10, 2012**

Capitol Extension, E1.016
1500 North Congress Ave.
Austin, TX

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

J. Paul Ozer, Chairman

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

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

CONSENT AGENDA

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

Various action items below, (including consent agenda items and other items) relating to awards or other actions under different programs list specific applicants by name. These lists are informational and do not limit the Board's ability to take action with respect to others under the specific program action items.

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

EXECUTIVE

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summaries for February 16, and April 12, 2012

Brooke Boston
Board Secretary

FINANCIAL ADMINISTRATION

- b) Presentation of the Department's 2nd Quarter Investment Report

David Cervantes
Dir. Financial Administration

BOND FINANCE

- c) Presentation, Discussion, and Possible Action on Resolution No. 12-027 authorizing a Mortgage Credit Certificate Program (MCC) for first-time homebuyers (Program 80) along with related program documents to be administered by the Texas Department of Housing and Community Affairs
- d) Presentation, Discussion, and Possible Action on Resolution No. 12-028 authorizing the purchase of warehoused mortgage backed securities with proceeds of Residential Mortgage Revenue Bonds, Series 2009C-3 (Program 77)

Tim Nelson
Dir. Bond Finance

RULES:

- e) Presentation, Discussion, and Possible Action to approve a final order adopting the repeal of 10 TAC Chapter 54, §§54.1 – 54.3 concerning Disaster Recovery

Jeff Pender
Deputy General Counsel

COMMUNITY AFFAIRS:

- f) Presentation, Discussion, and Possible Action regarding Approval of awards from the Notice of Funding Availability (NOFA) for the 2012 Community Services Block Grant (CSBG) State Discretionary Funds for Statewide, Migrant and Seasonal Farm Worker, and Native American projects
- g) Presentation, Discussion, and Possible Approval of use of LIHEAP funds by Sheltering Arms Senior Services as a supplement to WAP funds to optimize expenditures of ARRA WAP funds

Michael DeYoung
Assist. DED, Network &
Customer Service

HOME SINGLE FAMILY:

Sara Newsom
Dir. HOME

- h) Presentation, Discussion, and Possible Action regarding the 2011 Single Family Homeowner Rehabilitation, Homebuyer Assistance, and Tenant Based Rental Assistance Programs contract award recommendations

Homeowner Rehabilitation Assistance		
2011-0049	City of Olton	Olton
2011-0050	City of Holliday	Holliday
2011-0052	City of Lockney	Lockney

LEGAL DIVISION:

Jeff Pender
Deputy General Counsel

- i) Presentation, Discussion, and Possible Action on a proposed Agreed Final Order with respect to Avalon Apartments (HTC 91036)

MULTIFAMILY FINANCE DIVISION:

Cameron Dorsey
Dir. Multifamily Finance

- j) Presentation, Discussion, and Possible Action on Housing Tax Credit Amendments

08412	Alamito Gardens	El Paso
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- k) Presentation, Discussion, and Possible Action on Housing Tax Credit Program Extensions

09941	Residences at Stalcup	Fort Worth
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- l) Presentation, Discussion, and Possible Action to Approve Neighborhood Stabilization Program – Program Income (NSP-PI) Reservation System Participants

2012-601	Urban Progress CDC Texas, Inc.	Dallas
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COMPLIANCE AND ASSET OVERSIGHT:

Patricia Murphy
Chief of Compliance

- m) Presentation, Discussion, and Possible Action to approve a material amendment to the Land Use Restriction Agreement for Granada Apartments

REPORT ITEMS

The Board accepts the following reports:

1. Presentation and Discussion on a Status Report regarding the transfer of funds between subrecipients of the American Recovery and Reinvestment Act of 2009 (Recovery Act)
2. Report on the Transfers of American Recovery and Reinvestment Act of 2009 (Recovery Act)
3. Status Report on the HOME Program Contracts and Reservation System Participants
4. Status Report on the Contracts for Deed Prevalence Project with the University of Texas at Austin
5. Update on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments.
6. Status Report on 2012 Competitive Housing Tax Credit Cycle
7. TDHCA Outreach Activities, April 2012

Brooke Boston
DED SF, CA & Metrics

Brooke Boston
DED SF, CA & Metrics

Sara Newsom
Dir. HOME

Elizabeth Yevich
Dir. Housing Resource Ctr.

Jennifer Molinari
Fair Housing Coordinator

Cameron Dorsey
Dir. Multifamily Finance

Michael Lyttle
Chief, External Affairs

ACTION ITEMS

ITEM 2: MULTIFAMILY FINANCE DIVISION:

Cameron Dorsey
Dir. Multifamily Finance

- a) Presentation, Discussion, and Possible Action regarding Revision to the Lien Priority of Previously Awarded Multifamily Development Program HOME awards

12402	Fox Run	Orange
12403	Village of Kaufman	Kaufman

ITEM 8: EXECUTIVE:

Presentation, Discussion, and Possible Action to authorize the submittal of a remedial plan in the litigation
ICP vs TDHCA et al

Tim Irvine
Executive Director

OPEN SESSION

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

ADJOURN

To access this agenda & details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Nidia Hiroms, 512-475-3934; TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Nidia Hiroms, 512-475-3930 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

2b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION

May 10, 2012

Presentation, Discussion, and Possible Waiver of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle

Recommended Action

Deny requested waiver because the Applicant has not provided clear support for why the waiver is necessary to carry out a purpose set out in Chapter 2306, Texas Government Code.

WHEREAS, an application for tax credits was submitted for Barron's Branch (#12066); and

WHEREAS, after the application deadline and without a notice of administrative deficiency by the Department the applicant disclosed that the proposed Development does not meet the Department's unit mix requirements; and

WHEREAS, the applicant requested that the Department waive the unit mix requirement to allow more three bedroom units than allowed by 10 TAC §50.4(d)(7); and

WHEREAS, the applicant asserts that the waiver will fulfill the purpose and policies of Chapter 2306 by providing for the housing needs of individuals and families, providing for the preservation of affordable housing, and assisting local governments; and

WHEREAS, the staff has not identified specific reasons why the waiver is necessary to address a requirement or policy set out in Chapter 2306, Texas Government Code; and

WHEREAS, the waiver is not necessary to meet the requirements of §50.16(a) of the QAP; and

WHEREAS, the waiver request was undertaken by the Board at the April 12, 2012, meeting and the Board directed that consideration of the waiver be taken up at the May 10, 2012 Board meeting; therefore

It is hereby,

RESOLVED, that the request for a waiver of §50.4(d)(7) unit mix requirements for a Development proposed in a Central Business District is hereby denied.

Background

Pursuant to §50.5(d)(7) of the 2012-2013 QAP, the applicant disclosed, after submission of an application for Barron's Branch, that the proposed unit mix would exceed the 20% limitation for three bedroom units by 7% for Developments proposed in a Central Business District (CBD). The QAP limits CBD Developments to no more than 70% one bedrooms and/or Efficiency Units, 70% two bedrooms, and 20% three bedrooms. The application proposes a unit mix which includes 60 (40%) one bedroom units, 44 (29%) two bedroom units, 40 (27%) three bedroom units, and 6 (4%) four bedroom units. The applicant states that the unit mix is necessary to serve the needs of larger families with children and to meet the goals of the City of Waco. In addition, the applicant expressed concerns that the unit mix limitations violate fair housing laws by discriminating against families.

The applicant further indicates that the approval of the waiver would further the goals of Chapter 2306 by first providing housing needs for individuals and families, preserving existing affordable housing since, and assisting the City of Waco in providing housing to its residents.

The issue of granting a waiver for unit mix requirements presents several issues. First, under the provisions of 10 TAC §50.16, there would need to be a finding that the waiver was necessary to fulfill purposes or policies of Chapter 2306. While it is clear from the language of Chapter 2306 that compliance with Fair Housing is such a purpose or policy, staff does not believe that it has been established that Fair Housing would be violated without the waiver. The data that staff has independently obtained, corroborated by the applicant's own market study, shows that in the subject market the percentage of large families is actually less than the percentage of 3 bedroom units allowed by the established unit mix requirements. If the application is terminated for the non-conforming unit mix requirement, as opposed to proceeding with an approved waiver, presumably another applicant in the area would alternatively receive the credits and would comply with fair housing. Second, granting the waiver would provide the applicant a competitive advantage under the second tie breaker, credits per bedroom. Third, in past situations where similar waivers were sought by the Board, the Board took the position of denying the request (Champion Homes at Copperidge).

Pursuant to §50.16(b) of the QAP, any waiver must be determined necessary to fulfill the purpose and policies of Chapter 2306 of the Texas Government Code. Staff recommends denial of the waiver on the basis that the applicant has not met the burden of documenting that the waiver is necessary to fulfill the purposes or policies of Chapter 2306.

2012 – 2013 Multifamily Housing Revenue Bond Rules



Private Activity Bond Program
Multifamily Housing Revenue Bond Rules
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§33.1.Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2012 - 2013 Private Activity Bond Program years. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

§33.2.Authority.

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income. Notwithstanding anything in this chapter to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this title).

§33.3.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Chapter 2306 of the Texas Government Code, §§42, 141 and 145 of the Internal Revenue Code, and §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities) and repeated in the Tax Credit (Procedures) Manual.

(1) Eligible Tenants--

- (A) Individuals and families of Extremely Low, Very Low and Low Income;
- (B) Individuals and families of Moderate Income; or
- (C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(2) Institutional Buyer--

- (A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or

§33.5. Application Procedures, Evaluation and Approval.

- (a) **Application Costs, Costs of Issuance, Responsibility and Disclaimer.** The Applicant shall pay all costs associated with the preparation and submission of the Pre-application including costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.
- (b) **Pre-application.** An Applicant who requests financing from the Department for a Development shall submit a pre-application in the format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Department review at this stage is limited and not all issues of Eligibility pursuant to §50.4 of this title (relating to Ineligible Applicants, Applications and Developments) and Threshold pursuant to §50.8 of this title (relating to Threshold Criteria) are reviewed. Acceptance by staff of a pre-application does not ensure that the Applicant satisfies all Application Eligibility and Threshold requirements, including supporting documentation. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section.
- (1) The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use as a tie-breaking mechanism the criteria as stipulated in §50.6(e) of this title (relating to Allocation and Award Process). Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section.
- (2) After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development.
- (c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the full Application is presented to the Board.
- (d) **Pre-Application Threshold Requirements.**
- (1) As the Department reviews the Application, the Department will use the assumptions as reflected in §1.32 of this title (relating to Underwriting Rules and Guidelines), even if not reflected by the Applicant in the Application.
- (A) **Construction Costs Per Unit Assumption.** Costs not to exceed \$85 per square foot for general population developments and \$95 for elderly developments (Rehabilitation developments are exempt from this requirement).

- (B) Anticipated Interest Rate and Term. As stated in the pre-application.
- (C) Size of Units as reflected in §50.8(5)(B) of this title.
- (2) Zoning. Evidence of appropriate zoning must be provided as referenced in §50.8(8)(B) of this title.
- (3) Proper Site Control. Properly executed and escrow receipted Site Control in the name of the Applicant (principal or member of the General Partner) valid through the inducement Board meeting at pre-application and ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting.
- (4) Current Market Information (must support affordable rents).
- (5) Completed current TDHCA Bond Pre-Application.
- (6) Completed Bond Review Board Residential Rental Attachment for the current program year.
- (7) Evidence of paid Application Fees (\$1,000 to TDHCA, \$2,000 to Vinson and Elkins, as the Department's bond counsel, and \$5,000 to Texas Bond Review Board).
- (8) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property.
- (9) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius (radius ring or scale must be present on the map).
- (10) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Office of the Secretary of State.
- (11) Required Notification. Evidence of notification is required in the form provided in the pre-application. The "Public Information Form" must be completed and include a list of all of the recipients (including names and complete addresses). Proof of delivery, though not required to be submitted with the Application, must not be older than three months prior to the Application submission date. Notification must be sent to all the following individuals and entities (if the QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (G) of this paragraph, then the QAP will override the notification process listed in subparagraphs (A) - (G) of this paragraph):
 - (A) State Senator and Representative that represents the district containing the development;
 - (B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);
 - (C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);
 - (D) School District Superintendent of the school district containing the development;
 - (E) Presiding Officer of the School Board of Trustees of the school district containing the development; and
 - (F) The Applicant must request Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as follows:
 - (i) No later than fourteen (14) days prior to the date the pre-application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the pre-application materials 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 in 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 (the "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 seven (7) days prior to the pre-application submission, then the Applicant must certify to that fact in the pre-application materials; and
 - (iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the pre-Application submission in the "Certification of Notification Form" provided in the pre-application.
- (G) No 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 (email or fax to be "receipt confirmed") in the format required in the "Pre-application Notification Template" provided in the pre-Application materials. Developments located in an ETJ of a city are not required to notify city officials; however the county officials are required to be notified. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph in the event the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the pre-application is submitted.
- (i) Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in subparagraph (F)(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 representative of the district containing the Development; and
 - (ix) State senator of the district containing the Development.
- (H) 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 Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;
- (iv) Statement of whether the Development proposes New Construction or Rehabilitation;
- (v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.); and
- (vi) The approximate total number of Units and approximate total number of low-income Units.

(e) Pre-application Scoring Criteria.

- (1) Income and Rent Levels of the Tenants. Applications submitted as a Priority 1 will receive (10 points), Priority 2 will receive (7 points) and Priority 3 will receive (5 points).
- (2) Cost of the Development by Square Foot. For this item, 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). Costs do not exceed \$85 per square foot for general population Developments and \$95 per square foot for elderly Developments (1 point) (Rehabilitations will automatically receive (1 point)).
- (3) Size of Units. The average size of all Units combined in the Development must be greater than or equal to 950 square foot for general and must be greater than or equal to 750 square foot for elderly (5 points) (Rehabilitations will automatically receive (5 points)).
- (4) Period of Guaranteed Affordability for Low Income Tenants. Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).
- (5) Quality of the Units as referenced in §50.9(b)(4)(B) of this title (relating to Selection Criteria) and further defined in §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities). Must select at least (14 points).
- (6) Common Amenities as referenced in §50.8(5)(A) of this title and further defined in §1.1 of this title.
- (7) Tenant Services. Acceptable services include those described in §1.1 of this title (maximum 8 points).
- (8) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the Application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent 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 (0 points). A letter that does not directly express support by expresses it indirectly by inference (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).
 - (A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

- (B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);
 - (C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);
 - (D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).
- (9) Proximity to Community Services/Amenities within three (3) miles of the site. A map must be included identifying the Development Site and the location of services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction must be under active construction, post pad by the date pre-application is submitted. The map must include either a three (3) mile radius ring or a scale (Rehabilitation developments will receive (1.5 points) for each item in subparagraphs (A) - (O) of this paragraph).
- (A) Full service grocery store (1 point);
 - (B) Pharmacy (1 point);
 - (C) Convenience store/mini-market (1 point);
 - (D) Department or Retail Merchandise Store (1 point);
 - (E) Bank/Credit Union (1 point);
 - (F) Restaurant (including fast food) (1 point);
 - (G) Indoor public recreation facilities, such as civic centers, community centers, and libraries (1 point);
 - (H) Outdoor public recreation facilities, such as parks, golf courses, and swimming pools (1 point);
 - (I) Fire/Police Station (1 point);
 - (J) Medical offices (physician, dentistry, optometry) or hospital/medical clinic (1 point);
 - (K) Public School (only one school required for point and only eligible with general population developments) (1 point);
 - (L) Senior Center (1 point);
 - (M) Religious Institutions (1 point);
 - (N) Day Care Services (must be licensed - only eligible for Developments that are not Qualified Elderly Developments) (1 point);
 - (O) Post Office, City Hall, County Courthouse (1 point).
- (10) Rehabilitation or Reconstruction Developments will receive (30 points). This will include the demolition of old buildings and New Construction of the same number of units if allowed by local codes or less units to comply with local codes.
- (11) Preservation Developments will receive (10 points). This includes Rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the

next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years. Evidence must be provided.

- (12) **Declared Disaster Areas.** Applications will receive (7 points), if at the time the complete pre-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 declared Disaster Area. This includes federal, state and Governor declared disaster areas.
- (13) **Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits.** Applications will receive (6 points) if the proposed Development is located in a census tract in which there are no other existing Developments that were awarded housing tax credits in the last five (5) years and (3 points) if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These census tracts are outlined in the Housing Tax Credit Site Demographic Characteristics Report for the current program year.
- (f) **Multiple Site Applications.** For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.
- (g) **Financing Commitments.** After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.
- (h) **Trustee and Investment Banking Firm Selection.** The Applicant shall select, from the Approved list on the Department's website, a Trustee. An Applicant may coordinate with an out-of-state Trustee on the Approved list; however the funds must flow through a Texas office. The Applicant shall also select from the Approved list on the Department's website, an investment banking firm to serve as senior managing underwriter, co-managing underwriter or placement agent, as applicable. The Applicant will be responsible for all fees and expenses including those of the respective counsels, associated with the transaction.
- (i) **Full Application.** Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a final Application to the Department must submit the Parts 1 - 4 of the Housing Tax Credit Application. Priority 1 and 2 Applications (as elected on the Bond Review Board Residential Rental Attachment) must submit the Parts 1 - 4 prior to receipt of a Certificate of Reservation from the Texas Bond Review Board. For Priority 3 Applications the Parts 1 - 4 must be submitted within fourteen (14) days of the Certificate of Reservation date from the Texas Bond Review Board. The Parts 5 and 6 of the Application and all Third Party reports as required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. The Application consists of the completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website. The Tax Credit (Procedures) Manual provides guidance on completing the Uniform Application. If the Applicant is applying for other Department funding then they are encouraged to refer to the Rules for that program regarding Application submission requirements. The full Application must adhere to the Department's QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full Application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule

BOARD ACTION SUMMARY
MULTIFAMILY FINANCE DIVISION
OCTOBER 4, 2011

Presentation, Discussion and Possible Action regarding the proposed repeal of 10 TAC Chapter 50, concerning 2010 Housing Tax Credit Program Qualified Allocation Plan and Rules, and a proposed new 10 TAC Chapter 50, concerning 2012 Housing Tax Credit Program Qualified Allocation Plan for publication and public comment in the *Texas Register*.

Requested Action

RESOLVED, that the proposed repeal of current 10 TAC Chapter 50 and proposed new 10 TAC Chapter 50, regarding the Qualified Allocation Plan, is hereby ordered and it is approved, together with the preamble presented to this meeting, for publication in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the draft Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

Background

Attached behind this Board Action Item is the 2012 Draft Qualified Allocation Plan (“Draft QAP”) which reflects staff’s recommendations for revisions to the 2011 QAP for the Board’s consideration. The document is shown as a “blackline” of the 2011 QAP – additions are shown as underlined text and deletions are shown as marked through text. The Department historically maintains two years of actual rules in order to finish the current year under the existing rules while implementing the next year’s rule early for next year’s applicants. Thus, the 2011 QAP will remain in effect but the proposed action will replace the 2010 QAP in its entirety.

The Draft QAP will be posted to the Department’s website and published in the *Texas Register*. Public comment will be taken via mail, email or facsimile between October 21st and October 28th. There will also be consolidated public hearings during this time to garner public comment. The QAP will be brought before the Board in November for final approval.

The 2012 Draft QAP being recommended by staff contains several material changes from the 2011 QAP and a few changes that are clarification or organizational, namely in the movement of a few sections to the Department’s Definitions and Amenities for Housing Program Activities rule. Some of the more noteworthy changes include:

- Revisions to a few of the Definitions as well as the inclusion of new ones;
- Dates for the 2013 program year in the event a two-year QAP is adopted;
- Policy statements for major sections (i.e. Eligibility, Threshold and Selection) as well as policy statements for individual scoring items;
- Movement of the unit and common amenities and tenant supportive services lists to the Definitions and Amenities for Housing Program Activities Department rule;

- Applications proposing Rehabilitation for Developments more than 40 years old must be submitted as Reconstruction otherwise it will be considered ineligible;
- Qualification as a High Opportunity Area and the provision of the 30% boost in Eligible Basis;
- New mechanisms for determining tie-breakers;
- Increasing the rehabilitation costs from \$15k/Unit to \$25k/Unit with a comparable increase on USDA Applications;
- Allowing the Applicant to provide limited technical assistance relating to the creation and/or placing on record of the Neighborhood Organization for purposes of Quantifiable Community Participation and revising the point structure to minimize disparity where no Neighborhood Organizations exist;
- The Income and Rent Levels of the Tenants scoring items are revised to reflect deeper targeting for Developments proposed in major MSA's in order to achieve the maximum points and less restrictive deep targeting for those Developments proposed in other areas.
- Revising Unit of General Local Government Funding to reflect a more local and meaningful contribution;
- Revising the breakdown for Cost per Square Foot to include limits for Direct Hard Costs;
- Including new scoring items for Additional Evidence of Preparation to Proceed and Repositioning of Existing Developments;
- Revising the Leveraging of Private, State and Federal to include permanent, primary financing;
- Removing Green Building Amenities as a scoring item (but leaving in as a threshold item);
- Increasing the scores on a few items to allow for a new scoring item of Additional Evidence of Preparation to Proceed. The scoring items that reflect an increase are: State Representative and Senator letters, Rent Levels of the Unit, Cost per Square Foot, Tenant Services and Declared Disaster Areas;
- Reducing points for Economic Development Initiatives and Community Revitalization; and
- Reducing the Commitment or Determination Notice Fee from 5% to 4% of the Annual Housing Tax Credit Amount.

In addition to the roundtable discussion held on July 19, 2011, staff hosted a Discussion Forum whereby staff's initial proposed changes encompassing eligibility, threshold and selection criteria were posted. Interested registered users of the Forum were allowed the opportunity to provide staff with initial feedback on some of these proposed changes. Additionally, the Department released a preliminary Draft QAP and preliminary draft of the Definitions and Amenities for Housing Program Activities on August 22, 2011. The purpose of the preliminary release was to allow interested persons more time to review proposed changes, outside of the usual 7 day posting requirement for Board meeting materials. In response to the release, staff also received feedback from interested persons for consideration in the final Draft included in this Board presentation.

At the direction of the Board at the September 15th Board meeting, staff re-visited many of the changes that were initially proposed in an effort to streamline and simplify the housing tax credit process as well as re-capture the original intent of the housing tax credit program as a whole. As a result, staff hosted a roundtable discussion on September 27th to solicit feedback from the industry regarding some of these proposed changes that may not have been originally contemplated in the version presented at the September 15th Board meeting. The Draft QAP incorporates a variety of the initial public feedback, feedback from Board members, includes policy recommendations and administrative changes to improve the Housing Tax Credit program, and maintains compliance with all statutory and Code requirements.

Summary of Significant Recommendations from Staff

This section outlines some of the most significant recommendations being made by staff. Other revisions, details of revisions, formatting adjustments, and streamlining are not summarized, but are reflected in the attached Draft QAP. Citation references are to the numbered sections of the 2012 Draft QAP.

1. **§50.2 – Definitions (Page 2 of 95).** The changes made to this section include new definitions for Central Business District or Downtown District (meant to replace the former definition for Urban Core), High Opportunity Area, Transitional Housing and Target Population. Moreover, staff modified the definitions for Single Room Occupancy (SRO) and Supportive Housing which were mostly meant to indicate a shift in terminology from SRO developments, which is associated more with building type, to Supportive Housing, which is meant to reference a development type that would include, but not be limited to SRO's and various population types. Moreover, a definition for Transitional Housing is also introduced.
2. **§50.3 – Program Calendar (Page 5 of 95).** This section includes dates for the 2013 program year in the event a two year QAP is adopted.
3. **§50.4 – Ineligible Applicants, Applications and Developments (Page 8 of 95).** This section includes a policy statement reflective of the intent of the entire section, includes the General Contractor as appropriate into situations that would warrant ineligibility, allows for the replacement of the General Contractor or Guarantor should any of them be identified as ineligible, regulates a cap on the amount of housing tax credits per unit requested, exempts Developments located in a Central Business District that are adjacent to or within 300 feet of an active railroad from being ineligible and also modifies the description for being within the fall line of high voltage transmission lines according to HUD's language. It clarifies which of the required Development Amenities Supportive Housing Developments are exempt from providing. Moreover, it allows for Developments proposed in Central Business Districts to vary in the unit maximum percentages listed for each bedroom size provided there are no more than 70% one or two bedroom units or no more than 20% three bedroom units.
4. **§50.5(d) – Limitations on Developments Proposing to Qualify for a 30% Increase in Eligible Basis (Page 15 of 95).** This section proposes several revisions. First, it clarifies that the boost will be allowed to the extent it's needed for financial feasibility as determined by the Department. Second, this section allows the boost on Supportive Housing Developments provided they are proposed to be debt free. Third, the boost is allowed for Developments proposed in High Opportunity Areas and Central Business Districts based on the Department's definition of such areas.
5. **§50.6(b)(1) – Allocation and Award Process (Page 17 of 95).** The nonprofit set-aside section has been modified to state that all Applications that meet the requirements of the set-aside will be will automatically be included in the set-aside unless they elect otherwise and sign a corresponding certification in the Application. The at-risk section is modified to reflect statutory changes and clarifies that an Applicant may not submit an amendment while their Application is under review in order for the Development to qualify for the set-aside. The methodology for award recommendations under the set-asides has been revised to only allow USDA Applications that are not competitive in their respective set-aside to move over and compete within their sub-region.

6. **§50.6(e) – Tie Breakers (Page 20 of 95).** This section removes all of the previous criteria by which tie breakers would have been determined in the event multiple applications receive the same score. Staff suggests the tie breakers be determined based on: first, the lowest average of units per capita in the census tract where the proposed Development is located and all contiguous census tracts, supported by housing tax credits or tax exempt bonds at the time the Application Round begins; second, the least amount of credits per tax credit Unit; and third, based on each scoring item for the tied Applications compared in descending order. Once an item is identified where one score is greater than the tied Applicants' score, the Applicant with the highest score on that item will win this tie breaker.
7. **§50.7(a)(2) – Administrative Deficiency Process (Page 22 of 95).** This section has been revised to clarify that the Administrative Deficiency process is meant to clarify, correct or submit non-material missing information to resolve inconsistencies in the original Application. Moreover, any exhibits or forms that are part of the Application along with any supporting documentation will not be accepted by staff even if points were requested in the Self-Score form unless the Applicant provides an explanation satisfactory to staff of why the item is missing and explaining how it was beyond their control.
8. **§50.7(c) – Pre-application Threshold Criteria (Page 25 of 95).** This section proposes to remove the requirement for documented site control at pre-application and instead proposes to only require a legal description of the Development Site.
9. **§50.8(a)(3) – Threshold (Rehabilitation Costs) (Page 31 of 95).** This section has been modified to reflect an increase from \$15k/Unit in rehab costs to \$25k/Unit and an increase from \$9k/Unit to \$19k/Unit for USDA Applications. Additionally, the calculation of the costs excludes off-sites and contingency.
10. **§50.8(a)(4) – Threshold (Experience Certification) (Page 31 of 95).** This section has been revised to reflect a combined total number of units needed to qualify are 180 units as well as clarifies that an individual attempting to use the experience of another entity must demonstrate they have the authority to act on their behalf.
11. **§50.8(a)(5) – Threshold (Certifications - Common Amenities) (Page 33 of 95).** This section was revised to reflect the following: increased points based on total units required to meet threshold, increased point values on some amenities and the addition of new amenities. The new amenities include: splash pad/water feature play area, common area Wi-Fi and twenty-four hour monitored camera/security system in each building. The list of green building amenities has been revised to include Limited Green Amenities, Enterprise Green Communities, LEED Certification and NAHB Green for points under threshold. The list of common amenities is proposed to be moved to the Definitions and Amenities for Housing Program Activities rule. Finally, selection of Unit amenities to meet threshold has been added and is applicable to Tax Exempt Bond Developments only.
12. **§50.8(a)(6) – Threshold (Architectural Drawings) (Page 39 of 95).** This section is modified to indicate the site plan will need to identify the location of the required basic amenities and parking spaces as well as the approximate placement of the detention/retention pond, if applicable.
13. **§50.8(a)(8)(A) – Threshold (Site Control) (Page 40 of 95).** This section is revised to indicate that the Applicant must maintain site control within the timeframes established by the Department

through the QAP or risk being considered ineligible in the next Application Round. Language regarding the specific requirements and documentation on Identity of Interest Applications was removed and instead referred to the Real Estate Analysis rules.

14. **§50.8(a)(8)(B) – Threshold (Zoning) (Page 42 of 95).** This section is revised to require a letter from the chief executive officer confirming there is no zoning for the area containing the proposed Development and that also must state the Development as proposed is not inconsistent with the local requirements.
15. **§50.8(a)(8)(C) – Threshold (Financing Requirements) (Page 42 of 95).** This section clarifies that if other Department funding is being requested then evidence of a complete and receipted application from that program must be obtained no later than March 1.
16. **§50.8(a)(9)(B) – Threshold (Signage) (Page 46 of 95).** This section is proposed to be deleted.
17. **§50.8(a)(10) – Threshold (Development Proposed Ownership Structure). (Page 46 of 95).** This section has been modified to require a certification from the Applicant disclosing any developments administered in other states using state or federal programs and also authorizes those parties to release compliance histories to the Department.
18. **§50.8(a)(14) – Threshold (Supplemental Threshold Reports) (Page 49 of 95).** This section has been revised to reflect that a Property Condition Assessment is not required on those Developments proposing Reconstruction.
19. **§50.9(a)(1) – Selection (Financial Feasibility) (Page 51 of 95).** This section is revised in a way that reinstates the language from the 2010 QAP that simply requires supporting data from the permanent or construction lender that confirms the financial feasibility of the Development as proposed.
20. **§50.9(a)(2) – Selection (Quantifiable Community Participation) (Page 52 of 95).** This section is revised to reflect the following:
 - A Neighborhood Organization must provide at least a seventy-two (72) hour notice to persons eligible to join or participate in the affairs of the organization;
 - The Organization needs to have representatives of two or more separate households as participating members and the representatives need to actually live within the Organization’s boundaries;
 - The scoring of the letters has been revised to reflect 16 points for Applications where there are no existing Neighborhood Organizations and 14 points for letters that do not provide a reason for support or opposition or are considered unclear in their position. In both of these scenarios the Applicant will be eligible to receive up to 6 points for the Input other than QCP scoring item;
 - An Applicant may provide limited technical assistance in the creation and/or placing on record of a Neighborhood Organization; and
 - If the Department receives input that could be in violation of the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation. Any referrals will be reported to the Board and the status of such referrals will be reflected in any recommendations.

21. **§50.9(a)(3) – Income Levels of the Tenants (Page 55 of 95).** This scoring item was modified to reflect deeper targeting for Developments proposed in major MSA’s in order to achieve the maximum points and less restrictive deep targeting for those Developments proposed in other areas.
22. **§50.9(a)(4) – Size and Quality of the Units (Page 55 of 95).** This scoring item was modified to reflect the movement of the list of unit amenities to the Definitions and Amenities for Housing Program Activities rule.
23. **§50.9(a)(5) – Commitment of Funding by Unit of General Local Government (Page 56 of 95).** This section is revised to reflect lower amounts per Unit required to meet the point requirements. Specifically, to achieve 18 points the contribution from the Unit of General Local Government must be \$2,000/Unit (or \$1,000 for rural) and to achieve 12 points the contribution from the Unit of General Local Government must be at least \$1,000/Unit (or \$500 for rural). The source must be a local source and if in the form of a loan, it must be in the form of a below market rate loan, the loan must be at least 150 basis points below the current market rate and have a term of at least 3 years and origination fees of less than 2% of the loan amount. Another change reflects that if using development based rental subsidies it must be the granting of a new rental subsidy with a term of at least 15 years and coming directly from the Unit of General Local Government or Instrumentality thereof.
24. **§50.9(a)(6) – Community Support from State Representative or State Senator (Page 59 of 95).** This section is revised to reflect a change in the deadline for a State Representative or State Senator to withdraw their letter of support or opposition from June 1 to May 1. The section further clarifies that once the letter has been submitted, whether in advance of the deadline or not, the letter cannot be withdrawn or changed. Moreover, they are encouraged to not submit their letter earlier than the deadline so as to take into consideration of all constituent comment and other relevant input on the Development.
25. **§50.9(a)(7) – Rent Levels of the Tenants (Page 59 of 95).** This scoring item was modified to reflect deeper targeting for Developments proposed in major MSA’s in order to achieve the maximum points and less restrictive deep targeting for those Developments proposed in other areas.
26. **§50.9(a)(8) – Cost of the Development Per Square Foot (Page 60 of 95).** This section is modified to include limits on the Direct Hard Costs per square foot.
27. **§50.9(a)(9) – Tenant Services (Page 61 of 95).** This section was modified to reflect the movement of the list of tenant services to the Definitions and Amenities for Housing Program Activities rule. Additionally, there is more guidance provided on some of the tenant services listed where appropriate.
28. **§50.9(a)(11) – Additional Evidence of Preparation to Proceed (Page 62 of 95).** This is a new scoring item meant to provide an incentive for a level of due diligence by the Applicant and lender. It includes considerations for due diligence required for New Construction and Rehabilitation Developments. Additionally, it includes an item for those Applications that have been submitted in prior Application Rounds; however, they were not competitive enough to ultimately receive an award.

29. **§50.9(a)(12) – Leveraging of Private, State and Federal Resources (Page 63 of 95).** This section is revised to reflect points for permanent, primary financing.
30. **§50.9(a) – Green Building (Page 66 of 95).** This scoring item is proposed to be deleted.
31. **§50.9(a)(15) – Developments in Census Tracts with Limited Existing HTC Developments (Page 67 of 95).** This section is modified to allow full points if a Development is proposed in a census tract that does not have any existing HTC Developments or fewer points if a Development is proposed in a census tract that does not have any existing HTC Developments that serve the same Target Population.
32. **§50.9(a)(14) – Development Location (Page 68 of 95).** This section is revised to allow points under one of five criteria: if the Development is proposed to be located in a High Opportunity Area, a Central Business District, Federal Urban Enterprise Community or Urban Enhanced Enterprise Community (i.e. Growth Zones), an Economically Distressed Area (EDA), a Colonia or if the Application contains a resolution or ordinance of support from the Governing Body of the proposed Development. The first two criteria are eligible for 4 points while the remaining three criteria are eligible for 1 point.
33. **§50.9(a)(19) – Site Characteristics (Page 70 of 95).** This section is revised to increase the distance required from the site to the amenity from ¼ mile to ½ mile, increases the number of services/amenities for full points from three (3) to six (6) and includes additional services/amenities.
34. **§50.9(a)(20) – Repositioning of Existing Developments (Page 70 of 95).** This is a new scoring item meant to provide an incentive for the repositioning of a market rate property that would result in a substantial interior scope of work and create an increase the affordable housing stock.
35. **§50.9(a) – Development Size (Page 70 of 95).** This scoring item, previously considered item #22 is proposed to be deleted. This item had allowed for Developments with 36 units or less to receive 3 points; however, staff believes that the majority of the applications that would qualify for points under this item were already prioritized under the At-Risk Set-Aside.
36. **§50.9(a)(23) – Economic Development Initiatives (Page 71 of 95).** This section proposes to be reduced from 4 points to 1 point and includes economic development initiatives adopted by the local government (i.e. TIF or TIRZ), includes state designated Enterprise Zones and also proposes to move the EDA, Colonia or Federal Urban Enterprise Community or Urban Enhanced Enterprise Community (i.e. Growth Zones) items to Development Location.
37. **§50.9(a)(24) – Community Revitalization or Historic Preservation (Page 72 of 95).** This section is revised to reflect the following:
 - The maximum points under this scoring item have been revised from 6 points to 1 point and includes Community Revitalization whether in or outside of a Qualified Census Tract.
 - A letter from the Appropriate Local Official must be submitted affirming that the Development is located within the specific geographic area covered by the plan, that the plan is not a Consolidated Plan or other Economic Development Plan or city-wide plan, the plan has been approved or adopted by ordinance, resolution, or other vote by the Governing Body with jurisdiction over the area covered by the plan (or, if such body has

delegated that responsibility to another body by resolution, ordinance, or other vote, the body to which the responsibility was delegated) in a process that allows for public input and/or comment.

- Rehabilitation Developments as a sole qualifier is proposed to be removed and New Construction Developments that are part of a Community Revitalization Plan is allowed under the first qualifier in this section.

38. **§50.9(a)(26) – Third Party Funding Outside of Qualified Census Tracts (Page 74 of 95).** This section is proposed to be merged with Leveraging of Private, State and Federal Resources.
39. **§50.9(b) – Scoring Criteria Imposing Penalties (Page 74 of 95).** This section is revised to reflect that penalty points will not be assessed if an affirmative finding from the Board or the Executive Director that the facts which gave rise to the need for the extension associated with Carryover or 10% Test were beyond the reasonable control of the Applicant and could not have been reasonably anticipated and adds that a violation of Adherence to Obligations would could result in penalties.
40. **§50.12(f) – 10% Test (Page 84 of 95).** This section removes the submission requirement of a current original plat or survey and evidence of all applicable utilities and replaces them with a certification from a Third Party civil engineer stating that all necessary utilities will be available at the site and that there are no conditions on or affecting the Development that would adversely impact the development of the property as represented in the Application. Additionally, it requires a certification from the lender or syndicator identifying the Guarantors.
41. **§50.12(g) – Commencement of Substantial Construction (Page 85 of 95).** This requirement has been removed from the QAP and is addressed in Chapter 60 of the Compliance Administration rules.
42. **§50.13(b) – Amendment Process (Page 87 of 95).** This section is revised to reflect that exclusion of any threshold requirements is considered to be a material alteration of a Development.
43. **§50.13(c) – Extension Requests (Page 88 of 95).** This section is revised to propose that requests for extensions relating to Carryover, 10% Test, or Cost Certification that are submitted at least 30 days in advance of the applicable deadline will not have to pay an extension fee while those submitted after the deadline will be required to pay the extension fee. Moreover, extension requests will be approved by the Executive Director unless, at staff’s discretion, the request warrants Board approval.
44. **§50.14(f) – Commitment or Determination Notice Fees (Page 92 of 95).** This section proposes to reduce the Commitment or Determination Notice fee from 5% to 4% of the total annual housing tax credit amount.
45. **§50.14(l) – Extension and Amendment Fees (Page 93 of 95).** This section is revised to reflect that, as previously noted, extension requests submitted in advance of the deadline will not be required to pay the fee. Similarly, amendment requests that are considered non-material and prior to implementation will not be required to pay the amendment fee while those considered non-material and already implemented will be required to pay the fee.

46. **§50.14(m) – Refund of Fees (Page 93 of 95).** This section has been added to reflect that the Executive Director may approve full or partial refunds of fees as noted in the QAP.
47. **§50.16 – Waiver and Amendment of Rules (Page 94 of 95).** This section has been modified to allow for waiver requests from an Applicant relating to requirements in the QAP.
48. **§50.17(b) – Department Responsibilities (Page 95 of 95).** This section has been modified, consistent with recent statutory changes, to reflect the provision for adoption of a two-year QAP.

Scoring Breakdown in Descending Order of Points for the Draft 2012 QAP

QAP Para. #	Topic	Total Points	Notes	Legislative and/or Code Citation
1	Financial Feasibility	28 Max	N/A	2306.6710(b)(1)(A)
2	Quantifiable Community Participation (QCP)	24 Max	Range of +24 to 0	2306.6710(b)(1)(B); 2306.6725(a)(2)
3	Income Levels of the Tenants	22 Max	Range 22 to 20	2306.6710(b)(1)(C) and (e); 2306.111(g)(3)(B) and (E); 42(m)(1)(B)(ii)(I)
4	Size and Quality of the Units	20 Max	Size of Units – up to 4 points; Quality of Units – up to 6 points	2306.6710(b)(1)(D); 42(m)(1)(C)(iii)
5	Commitment of Funding by Unit of General Local Government	18 Max	Range 18 to 12	2306.6710(b)(1)(E)
6	State Representative or Senator Input	16 Max	Range of +16 to -16	2306.6710(b)(1)(F); 2306.6725(a)(2)
7	Rent Levels of the Units	14 Max	Range 14 to 2	2306.6710(b)(1)(G)
8	Cost Per Square Foot	12	N/A	2306.6710(b)(1)(H); 42(m)(1)(C)(iii)
9	Tenant Services	10 Max	Range 8 to 1	2306.6710(b)(1)(I); 2306.6725(a)(1)
10	Declared Disaster Areas	8	N/A	2306.6710(b)(1)(J)
11	Additional Evidence of Preparation to Proceed	7	N/A	N/A
12	Leveraging of Private, State and Federal Resources	7 Max	Range 7 to 6	2306.6725(a)(3); 2306.6710(E)(1)
13	Community Input Other Than QCP	6 Max	Range 6 to 0	N/A
14	Pre-Application Incentive Points	6	N/A	2306.6704
15	Census Tracts with Limited Existing HTC Developments	6 Max	Range 6 to 4	2306.6725(b)(2)
16	Development Location	4 Max	Range 4 to 1	2306.6725(a)(4) and (b)(2); 2306.127; 42(m)(1)(C)(i) and (vii); 2306.6710(e)(1)
17	Special Housing Needs Populations	4	N/A	42(m)(1)(C)(v)
18	Length of Affordability	4 Max	Range 4 to 2	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)
19	Site Characteristics	4	Up to 4 points	N/A
20	Repositioning of Existing Developments	3	N/A	N/A
21	Sponsor Characteristics	2	N/A	42(m)(1)(C)(iv)
22	Economic Development Initiatives	1	N/A	2306.127
23	Revitalization or Historic Preservation	1 Max	N/A	42(m)(1)(C)(iii); 42(m)(1)(B)(ii)(III); H.R 3221
24	Right of First Refusal	1	N/A	2306.6725(b)(1); 42(m)(1)(C)(viii)
	Penalties	N/A	Range	2306.6710(b)(2)

Attachment 1 Proposed New Chapter 50

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 50, Qualified Allocation Plan §§50.1-50.17. The new sections are proposed in order to implement changes that will improve the 2012 Housing Tax Credit Program.

Mr. Timothy K. Irvine, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Irvine has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed section will not impact local employment.

The public comment period will be held between October 21 to October 28, 2011 to receive input on this section. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2012 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM OCTOBER 28, 2011.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed new section affects no other code, article or statute.

§50. Qualified Allocation Plan

~~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 Unit of General Local Government.~~
- ~~(E) 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 with terms meeting the requirements of subparagraphs (A) - (C) of this paragraph or ~~or a copy of the application to the funding entity and~~ a letter from the funding entity indicating that the application was received and that the terms for available funding meet the requirements of subparagraphs (A) - (C).~~
- ~~(F) At the time the executed Commitment 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, identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment 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 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 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.~~

~~(13) **Housing Needs Characteristics.** (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the Self Score form based on objective measures of housing need in the Place where the Development is located. This Affordable Housing Need Score for each Place will be published in the 2011 Site Demographic Characteristics Report. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:~~

- ~~(A) An incorporated place; or~~
- ~~(B) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.~~

~~(13) **Community Input other than Quantifiable Community Participation.** The purpose of this scoring item is to allow community and civic organizations active in the area that includes the proposed Development the opportunity to express their support or opposition. If an Application was awarded 16 or 14~~12~~ points under paragraph (2) of this subsection, then~~

**HOUSING RESOURCE CENTER
BOARD ACTION REQUEST
NOVEMBER 10, 2011**

Recommended Action

Presentation, Discussion and Possible Approval of the 2012 Affordable Housing Needs Score Methodology

RESOLVED, that the 2012 Affordable Housing Needs Score Methodology for the potential use in the HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) programs, in the form presented to this meeting, is hereby approved.

Background

The Affordable Housing Needs Score (AHNS) scoring criterion for potential use in evaluating HOME, HTC, and HTF applications. The formula is submitted annually for public comment. The final methodology and resulting scores are published on the TDHCA website.

While not specifically legislated by the state, the AHNS historically has helped address other need-based funding allocation requirements by responding to:

- an IRS Section 42 requirement that the selection criteria used to award the HTC funding must include “housing needs characteristics.”
- State Auditor’s Office (SAO) and Sunset findings that called for the use of objective, need based criteria to award TDHCA’s funding.

Through the AHNS, applicants are encouraged to request funding to serve communities that have a high level of need. The HOME, HTC, and HTF programs have used slightly modified versions of the AHNS because the programs have different eligible activities, households, and geographical areas. Under §2306.111(c) of the Texas Government Code, 95 percent of HOME funding is set aside for non-participating jurisdictions (PJ). Therefore, the HOME AHNS only uses need data for non-PJs.

The Draft 2012 AHNS Methodology was made available for public comment from September 17th through October 18th, 2010. No public comments were received. However, four minor changes have been made to the AHNS as a result of changes made to the Qualified Allocation Plan (QAP) and public comment received on the Regional Allocation Formula (RAF). Where the QAP referenced the AHNS and where the AHNS and RAF were similar, changes were made in the AHNS to correspond to the changes made in the QAP and RAF.

At the October 4, 2011 Board meeting, the draft QAP excluded the use of the AHNS for 2012. Therefore, in the Background section of the AHNS, the following language was amended from:

“The AHNS scoring criterion is has been used to evaluate HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) applications.” And, “While not specifically legislated by the state, the AHNS helps has historically helped to address other need based funding allocation requirements...”

In the RAF, changes were made to the methodology to ensure staff was using the most recent data set from the U.S. Census Bureau. In the AHNS, the reference to the census was clarified as “2000 Census” since that is the most complete data set available to quantify housing need.

The RAF and AHNS have the same footnote (footnote 7 in the RAF and footnote 4 in the AHNS). The RAF footnote was changed and so the AHNS footnote must be changed. In footnote 4 of the AHNS methodology, language was amended as follows:

“Applicants may petition TDHCA to update the “Rural” designation of ~~an area~~ a development’s location by providing a letter from a USDA Rural Development official clearly stating that the area is eligible for funding by USDA Rural Development.”

Petitions to change a place from urban to rural will still be accepted by a letter from a local USDA official stating that the proposed development site is eligible for USDA funding. However, receipt of a letter will not change the entire place to rural – it will only change that one development site.

Staff recommends updating the scores with recent award data until November 19th to allow for any changes in 2011 awards during the November 10th Board meeting. The 2011 HISTA data, or Households by Income, Size, Tenure and Age, from Ribbon Demographics is used in the AHNS. HISTA data is based upon special tabulations from the US Census Bureau with demographic projections provided by Claritas.

Comparison between Current % Point System and Example 9% Point System

QAP Para. #	Topic	current Maximum points	% of total Current points in category	Example: lower statutory points, close gaps, add below the line criteria, revalue points	% of total Example points in category
1	Financial Feasibility	28	12%	19	8%
2	Quantifiable Community Participation (QCP)	24	11%	18	8%
3	Income Levels of the Tenants	22	10%	17	7%
4A	Size of Units	6	3%	4	2%
4B	Quality of Units	14	6%	12	5%
5	Commitment of Funding by Unit of General Local Government	18	8%	15	7%
6	State Representative or Senator Input	16	7%	14	6%
7	Rent Levels of the Units	14	6%	13	6%
8	Cost Per Square Foot	12	5%	12	5%
9	Tenant Services	10	4%	11	5%
10	Declared Disaster Areas	8	4%	10	4%
	Total Above the Line Maximum points	172	75%	145	63%
11	Additional Evidence of Preparation to Proceed	7	3%	2	1%
12	Leveraging of Private, State and Federal Resources	7	3%	3	1%
13	Community Input Other Than QCP	6	3%	8	3%
14	Pre-Application Incentive Points	6	3%	3	1%
15	Census Tracts with Limited Existing HTC Developments	6	3%		
16	Development Location	4	2%		
17	Special Housing Needs Populations	4	2%	4	2%
18	Length of Affordability	4	2%	4	2%
19	Site Characteristics	4	2%	3	1%
20	Repositioning of Existing Developments	3	1%	3	1%
21	Sponsor Characteristics	2	1%	2	1%
22	Economic Development Initiatives	1	1%	2	1%
23	Revitalization or Historic Preservation* Using TDHCA proposed Revitalization Index and standards	1	0%	9	4%
24	Right of First Refusal	1	0%	1	0%
	new criteria				
new	High Opportunity Area - income, poverty and school factors			9	4%
new	Census tracts with less assisted rental housing of all types than average			9	4%
new	Crime Rate: located in City or tract with crime rate less than crime rate for City of Dallas			8	3%
new	Preference given for families with children			7	3%
new	Quality of education : located in 2 or more levels of recognized or exemplary public school attendance zones			6	3%
new	Located in a city with no previous allocation of tax credits			2	1%
	Total Below the Line Maximum Points	56	25%	85	37%
	Total Maximum Points	228		230	

Comparison using Current 9 % Point System for Possible HOA application, Possible Minority area application, and Possible QCT / concerted community revitalization plan area applications

QAP Para. #	Topic	current Maximum points	Possible HOA application: Current Points	Possible Minority area application: Current Points	Possible QCT concerted community revitalization area application: Current Points
1	Financial Feasibility	28	28	28	28
2	Quantifiable Community Participation (QCP)	24	18	24	24
3	Income Levels of the Tenants	22	22	22	22
4A	Size of Units	6	6	6	6
4B	Quality of Units	14	14	14	14
5	Commitment of Funding by Unit of General Local Government	18		18	18
6	State Representative or Senator Input	16		16	16
7	Rent Levels of the Units	14	14	14	14
8	Cost Per Square Foot	12	12	12	12
9	Tenant Services	10	10	10	10
10	Declared Disaster Areas	8	8	8	8
	Total Above the Line Maximum points	172	132	172	172
11	Additional Evidence of Preparation to Proceed	7	7	7	7
12	Leveraging of Private, State and Federal Resources	7			
13	Community Input Other Than QCP	6	6		
14	Pre-Application Incentive Points	6	6	6	6
15	Census Tracts with Limited Existing HTC Developments	6	6	6	
16	Development Location	4	4	1	
17	Special Housing Needs Populations	4	4	4	4
18	Length of Affordability	4	4	4	4
19	Site Characteristics	4	4	4	4
20	Repositioning of Existing Developments	3			
21	Sponsor Characteristics	2	2	2	2
22	Economic Development Initiatives	1	1	1	1
23	Revitalization or Historic Preservation* Using TDHCA proposed Revitalization Index and standards	1		1	1
24	Right of First Refusal	1	1	1	1
	new criteria				
new	High Opportunity Area - income, poverty and school factors				
new	Census tracts with less assisted rental housing of all types than average				
new	Crime Rate: located in City or tract with crime rate less than crime rate for City of Dallas				
new	Preference given for families with children				
new	Quality of education : located in 2 or more levels of recognized or exemplary public school attendance zones				
new	Located in a city with no previous allocation of tax credits				
	Total Below the Line Maximum Points	56	45	37	30
	Total Maximum Points	228	177	209	202

Comparison using Example 9 % Point System for Possible HOA application, Possible Minority area application, and Possible QCT / concerted community revitalization plan area applications

QAP Para. #	Topic	Example: lower statutory points, close gaps, add below the line criteria, revalue points	possible HOA application: Example points	possible Minority area application: Example points	Possible QCT concerted community revitalization area application: Example Points
1	Financial Feasibility	19	19	19	19
2	Quantifiable Community Participation (QCP)	18	12	18	18
3	Income Levels of the Tenants	17	17	17	17
4A	Size of Units	4	4	4	4
4B	Quality of Units	12	12	12	12
5	Commitment of Funding by Unit of General Local Government	15	0	15	15
6	State Representative or Senator Input	14	0	14	14
7	Rent Levels of the Units	13	13	13	13
8	Cost Per Square Foot	12	12	12	12
9	Tenant Services	11	11	11	11
10	Declared Disaster Areas	10	10	10	10
	Total Above the Line Maximum points	145	110	145	145
11	Additional Evidence of Preparation to Proceed	2	2	2	2
12	Leveraging of Private, State and Federal Resources	3	0	3	3
13	Community Input Other Than QCP	8	8	0	0
14	Pre-Application Incentive Points	3	3	3	3
15	Census Tracts with Limited Existing HTC Developments				
16	Development Location				
17	Special Housing Needs Populations	4	4	4	4
18	Length of Affordability	4	4	4	4
19	Site Characteristics	3	3	3	3
20	Repositioning of Existing Developments	3			
21	Sponsor Characteristics	2	2	2	2
22	Economic Development Initiatives	2	2	2	2
23	Revitalization or Historic Preservation* Using TDHCA proposed Revitalization Index and standards	9			9
24	Right of First Refusal	1	1	1	1
	new criteria				
new	High Opportunity Area - income, poverty and school factors	9	9		
new	Census tracts with less assisted rental housing of all types than average	9	9		
new	Crime Rate: located in City or tract with crime rate less than crime rate for City of Dallas	8	8		
new	Preference given for families with children	7	7	7	7
new	Quality of education : located in 2 or more levels of recognized or exemplary public school attendance zones	6	6		
new	Located in a city with no previous allocation of tax credits	2			
	Total Below the Line Maximum Points	85	68	31	40
	Total Maximum Points	230	178	176	185

Respectfully Submitted,

/s/ Michael M. Daniel

Michael M. Daniel
State Bar No. 05360500
DANIEL & BESHARA, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9230
Fax 214-741-3596
E-mail: daniel.michael@att.net
Attorney for Plaintiff

Laura B. Beshara
State Bar No. 02261750
DANIEL & BESHARA, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9230
Fax 214-741-3596
E-mail: laurabeshara@swbell.net
Attorney for Plaintiff

Certificate of Service

I hereby certify that on June 18, 2012, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system will send a "Notice of Electronic Filing" to the following individuals who have consented in writing to accept this Notice as service of this document by electronic means: Timothy E. Bray, Assistant Attorney General, State of Texas; Shelly Dahlberg, Assistant Attorney General, State of Texas; Michael C. Kelsheimer, William B Chaney, George Tomas Rhodus, James D MacIntyre.

s/ Michael M. Daniel