

**SUPPLEMENT TO THE**  
**BOARD MEETING OF SEPTEMBER 12, 2013**



**TEXAS DEPARTMENT OF  
HOUSING & COMMUNITY AFFAIRS**  
*Building Homes. Strengthening Communities.*

5b

Public Comment



THE GALVESTON  
NORTHSIDE  
TASKFORCE



September 6, 2013

Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711

RE: Item 5, Rebuilding Galveston Public Housing

Dear Mr. Irvine:

The Galveston County Collaborating Organizations<sup>1</sup> support rebuilding public housing units lost during Hurricane Ike in the City of Galveston, and urge the Texas Department of Housing and Community Affairs (TDHCA) Board to approve any tax credits and waivers necessary to rebuild this much needed housing.

When 569 units of public housing were demolished by the Galveston Public Housing Authority shortly after Hurricane Ike in 2008, the families who lived in those units were displaced and prevented from returning home to Galveston. These

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<sup>1</sup> The membership of the coalition known as the Galveston County Collaborating Organizations varies depending on the issue. Generally the CO is comprised of: NAACP Galveston Unit 6180, LULAC Galveston Council 151, Galveston County Coalition for Justice, Northside Task Force, Gulf Coast Interfaith, Barbour's Chapel Community Development Corporation, NAACP Mainland Branch Unit 6201, NAACP Dickinson/Bay Area Branch Unit 6280, LULAC Texas City Council 255, and Gulf Coast Homeless Coalition.

families were overwhelmingly people of color, and a high percentage of them included persons with disabilities. Many are still unable to return home five years later because of the failure to rebuild these much-needed affordable units.

The ongoing opposition to rebuilding public and affordable housing in Galveston has been ugly and openly race-based, and it has been clear that families with children are particularly disfavored. While opponents have attempted to present themselves as champions of fair housing, preventing rebuilding public housing in Galveston would only deprive low income Galvestonians of housing opportunities and continue to prevent racial and ethnic minority families, families with children, and persons with disabilities – people who are members of protected classes under the Fair Housing Act - from returning to their communities and living in Galveston.

The failure to rebuild public housing in Galveston is a violation of fair housing law, of the government's obligations to affirmatively further fair housing, and of the Conciliation Agreement between the State of Texas, HUD, and advocacy groups. Both HUD and the State of Texas have made their position on the obligation to rebuild Galveston public housing clear, and the City of Galveston City Council approved a rebuilding plan on September 28, 2012.

Rebuilding Galveston for all our people, regardless of their race, national origin or income is a continuation of the struggle for freedom and civil rights. GCCO supports rebuilding Galveston Public Housing, and urges the TDHCA Board to do so as well.

Respectfully Submitted,

## **THE GALVESTON COUNTY COLLABORATING ORGANIZATIONS**

The Galveston Northside Taskforce

By: Lillian McGrew

Lillian McGrew, Chairperson



20 August 2013

Sent via email to: [Teresa.Morales@TDHCA.State.TX.US](mailto:Teresa.Morales@TDHCA.State.TX.US)

Ms. Morales,

On 16 August 2013, Mr. Gilbert Martinez, Environmental Advisor at the GLO, informed the Galveston Open Government Project (GOGP) that the results of the 8-Step Decision Making Process required by E.O. 11988 (see below) will be available “within the next month or so”.

How can the TDHCA Board make a decision on the housing tax credits for the Galveston Initiative II project before the 8-Step Decision Making Process is complete and part of the application for the Board to review?

Why is the GLO allowing the applicant to submit their application before this Process is complete? Does this mean that they have no intention of following the dictates of E.O. 11988 which directs the GLO to make every effort to find alternative sites outside of the floodplain which will lower the amount of taxpayer funds needed to build the project AND reduce the amount of risk that this project will be subjected to after construction?

Following the dictates of E.O. 11988 lowers the cost and risk to the taxpayers and the residents of the project. There are dozens of alternative sites available to the applicant that will provide the reduction of costs and risks demanded by this Order, but the fact that they are moving full speed ahead with the Cedar Terrace site seems to indicate that they have no intention of identifying and utilizing alternative sites as required.

For this reason, the GOGP would like to request that the Board suspend this application until the GLO presents its list of alternative sites as required by E.O. 11988.

***“Executive Order 11988 requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.”***

***“3. Identify and evaluate practicable alternatives to locating in the base floodplain, including alterative sites outside of the floodplain...”***

***“Among a number of things, the Interagency Task Force on Floodplain Management clarified the EO with respect to development in flood plains, emphasizing the requirement for agencies to select alternative sites for projects outside the flood plains, if practicable,...”***

**<http://www.fema.gov/plan/ehp/ehplaws/eo11988.shtm>**

Respectfully submitted,

David Stanowski, President  
Galveston Open Government Project, Inc.  
216 Seawall Boulevard  
Galveston, TX 77550  
409-621-2099  
[gogp@att.net](mailto:gogp@att.net)

**From:** [Charles](#)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** Public Housing Tax Credits in Galveston  
**Date:** Saturday, August 17, 2013 2:49:41 PM

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Ms. Morales,

I do not believe that MBS should be awarded with a financing vehicle that will make it more profitable for them to rebuild segregated reservations of poverty north of Broadway in Galveston. This effort by McCormick Baron and Salazar to be awarded tax credits for rebuilding Cedar Terrace public housing is widely opposed and should be rejected by TDHCA. Thank you,

Charles Wiley

**From:** [Norman Pappous](#)  
**To:** [Teresa.Morales@TDHCA.State.TX.US](mailto:Teresa.Morales@TDHCA.State.TX.US)  
**Cc:** [Elizabeth Beeton](#)  
**Subject:** Galveston Initiative II, L.P. - Tax Credit Application  
**Date:** Sunday, August 18, 2013 12:02:31 PM

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To whom it may concern,

My name is Norman D. Pappous and I represent District 4 on the Galveston, TX City Council.

I am opposed to any tax credits for the reason that the construction and relocation of residents to this site does not "Affirmatively Further Fair Housing" and, despite repeated requests, the City Council has received no written statement from HUD or GLO that claim otherwise.

Cedar Terrace is located in the highest concentration of poverty in the City of Galveston and to build federally funded housing there is therefore illegal. I urge you to review the federal court decisions in *Gautreaux v HUD*, and *Thompson v HUD*.

Best Regards,

Norman D. Pappous

Galveston City Councilman, District 4

16 August 2013

Re: Galveston Initiative II, L.P. aka the rebuilding of Public Housing at the Cedar Terrace site

To: The Texas Department of Housing and Community Affairs  
(TDHCA) Board of Directors  
221 East 11th Street  
Austin, Texas 78701-2410

Sent via email to:  
Teresa Morales  
[Teresa.Morales@TDHCA.State.TX.US](mailto:Teresa.Morales@TDHCA.State.TX.US)

Members of the Board, you have received a set of plans for this project along with hundreds of pages of supporting materials that make it look quite appealing on paper. There is little doubt that if it were to be completed, it would produce some well-built and nice looking buildings, but that is NOT the real issue for your consideration. **You must consider how the location of this project will affect the residents, not the buildings.**

The Galveston Open Government Project (GOGP) does not object to this project being built, we simply argue that **it should NOT be built at this location.** After reviewing the short summary of the problems and deficiencies with this site, provided below, we hope that you will share our deep concerns and decline to issue housing tax credits for any project to be built on this site. We have a great deal more evidence to support our position, if you would like to review it, but **what we have provided should be sufficient to demonstrate this site's unsuitability.**

The Cedar Terrace site, in Galveston, where the applicant proposes to build the Galveston Initiative II, **is clearly the worst site in the entire County for Public Housing for the simple reason that it has the highest level of poverty.** Building in a census tract with hyper concentrated poverty **will violate the Fair Housing Act,** and is contrary to many judicial rulings in fair housing cases.

In ICP v. TDHCA, the court found in favor of ICP on its disparate impact claim against the TDHCA under 3604(a) and 3605(a) of the Fair Housing Act (FHA) which left no doubt that **the TDHCA is subject to the current definitions and applications of the Fair Housing Act when it selects where to allocate the State's housing tax credits.**

The Cedar Terrace site is so obviously unacceptable that it begs the question **why there is so much political pressure to build this project on this particular site,** and not on a site that would conform to all of the fair housing laws? This issue is not addressed in the application before you. This is what the applicant does not want you to consider, because if you do, you will never allow this project to be built on this site. However, in all fairness, **the applicant did not choose this site; it was forced on the applicant by local "special-interest groups".**

The reason that this project is slated to be built on an unacceptable, and in fact unlawful site, is simply because these **local "special-interest groups" have been able to "pressure" local, state, and federal authorities to do so,** in a corrupt political bargain, because building on this site provides these groups political power and financial gain.

In May 2012, the voters in the City of Galveston finally had had enough of the undue influence on local public policy that these groups enjoyed, and elected six of seven City Councilmembers who **promised to shut down the isolated segregated reservations of poverty** north of Broadway, and replace them with either a voucher system or a regional Public Housing plan that would fully conform to the requirements and the spirit of the Fair Housing Act.

However, within days after the election, Councilmembers had already begun to buckle under the pressure from these “special-interest groups”. By the time of the final vote, on 28 September 2012, **four of the six broke their promises to integrate Public Housing, and we are back to the unlawful segregated plan you must consider today.** It is has been a enormous disappointment to the voters of this city to have these Councilmembers deviate from their campaign promises in such a dramatic way, but they are clearly afraid of these “special-interest groups”.

Recently these same groups were **alleged to have interfered with the federal procurement process** for the Human Capital Plan that the Galveston Housing Authority (GHA) put out on an RFP, and they were referred to federal and state authorities for investigation.

<http://www.GalvestonOGP.org/GHA/Human-Capital-1.pdf>  
<http://www.GalvestonOGP.org/GHA/Human-Capital-2.pdf>

When the rebuilding of Public Housing became necessary after Hurricane Ike, **there was absolutely no effort to start with a clean slate and search for the best sites throughout the County,** as required by HUD and numerous court rulings, because tremendous political pressure was applied to force rebuilding at the former Public Housing sites, especially this one, **regardless of the harm it would do to the residents.**

The corrupt political decision to rebuild at the Cedar Terrace site has **completely ignored what is best for the impoverished residents of Public Housing in violation of several laws.** Under the current application of these laws, as refined by judicial rulings, **Public Housing is supposed to be built in so-called “high-opportunity neighborhoods”** (HOAs) that will offer its residents the best chance to escape from poverty. A census tract with 61% of its residents living below the poverty level is the very definition of a low-opportunity neighborhood; the exact opposite of an acceptable location, and completely unsuitable for Public Housing.

Who are these “local special-interest groups” who want this project built at this site so very badly? If you receive any letters in support of this application, they are likely to be from them, or were written at their “request”. The only other “support” for this application could come from uniformed sources unfamiliar with the conditions at the site and in the neighborhood that surrounds it.

If you do not stand in opposition to the pressure from these local “special-interest groups”, and deny this application, **it will condemn several more generations of impoverished minorities to live in the isolated reservations of segregated poverty** that this application supports.

Fundamental reasons why the Board should reject this application for housing tax credits to rebuild on the Cedar Terrace site:

## 1. Poverty

In ICP v. TDHCA:

<http://www.tdhca.state.tx.us/multifamily/htc/inclusive-communities-project.htm>

<http://www.danielbesharalawfirm.com/Pages/ICPvTDHCA.aspx>

In a memorandum of opinion and order filed March 20, 2012, *“the court finds in favor of ICP on its disparate impact claim under the FHA...”* Page 39. In other words, **the court found that the TDHCA violated the Fair Housing Act, in the Dallas metro area, by issuing housing tax credits for projects in unacceptable locations.**

<http://www.danielbesharalawfirm.com/Documents/memorandum%20opinion%20and%20order%202012%20WL%20953696.pdf>

**The court adopted a remedy** which was designed to prevent the TDHCA from FHA violations in the future, and while the TDHCA has not yet adopted it as an administrative remedy statewide,

and the court did not order it as a statewide judicial remedy, it is very instructive as to what most likely will not pass judicial scrutiny on the use of housing tax credits in the City of Galveston.

*“The Plan embraces the notion of providing maximum permissible incentives for areas that truly reflect the **greatest opportunity**, namely those **areas with the highest income, lowest poverty, and best public education opportunities.**”* May 18, 2012 Remedial Plan, Page 3  
<http://www.danielbesharalawfirm.com/Documents/TDHCA%20notice%20of%20proposed%20remedial%20plan.pdf>

The Cedar Terrace site cannot possibly meet those criteria.

*“In order to qualify as being in an HOA (High Opportunity Area), a development must be in a census tract that has **BOTH a low incidence of poverty AND an above median income as well as being located in an area served by either recognized elementary schools or having a significant and accessible element of public transportation.**”* May 18, 2012 Remedial Plan, Page 5  
<http://www.danielbesharalawfirm.com/Documents/TDHCA%20notice%20of%20proposed%20remedial%20plan.pdf>

The actual scoring system used in the remedy is looking for placement in census tracts where the **poverty rate is less than 15%, AND household income is in the top quartile for the county, and the schools are rated exemplary or recognized by the TEA.** May 18, 2012 Remedial Plan, Page 6  
<http://www.danielbesharalawfirm.com/Documents/TDHCA%20notice%20of%20proposed%20remedial%20plan.pdf>

**The poverty rate in the Cedar Terrace neighborhood is 61%, FOUR TIMES HIGHER than what the court ruled was acceptable in the Dallas metro area, household income is in the bottom quartile in the County, and the nearby school is NOT rated exemplary or recognized by the TEA.**

**Clearly building at this location is unconscionable due to the level of poverty and is highly unlikely to pass judicial scrutiny.**

The ICP case is not absolute precedent for the rest of the State, and there may be slight differences in how rulings are applied to 4% and 9% tax credits, however, **there is simply no way that the TDHCA can justify trapping impoverished minorities in this poverty-stricken neighborhood for the next few generations**, just to appease the “special-interest groups” that demand that this project must be built on this site.

Build it in a high-opportunity neighborhood somewhere else in the County, and let the Galveston Housing Authority sell this land for industrial and/or commercial use. A residential development of any kind should not be built here.

## 2. Segregation

The Fair Housing Act mandates that Public Housing be built in locations that will reduce racial segregation. Typically this means it should be built in majority White areas. **The 2010 census found that the census tract containing the Cedar Terrace site has a population that is 60% Black and 34% Hispanic!**

The Galveston Housing Authority’s Human Capital Plan states that **the population that they intend to return to Cedar Terrace is 80% Black and 12% Hispanic**. This means that there is no conceivable way that building in this location will reduce racial segregation, and yet, the application is to build on this site!

Once again, everyone involved in this project knows why it should not be built in this location, but they push on in spite of this knowledge to appease the “special-interest groups” that demand that it be built here.

Clearly **building on this site will violate the Fair Housing Act for two fundamental reasons; the failure to de-concentrate poverty and the failure to de-concentrate racial segregation**. Building here will aggravate both demographic metrics.

## CFR 941.202: Site and Neighborhood Standards

All Public Housing construction must meet the strict standards of CFR 941.202:

<http://www.gpo.gov/fdsys/pkg/CFR-2000-title24-vol4/xml/CFR-2000-title24-vol4-sec941-202.xml>

*“Proposed sites for public housing projects to be newly constructed or rehabilitated must be approved by the field office as meeting the following standards:”*

*“(b) The site and neighborhood must be suitable from the standpoint of **facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063, and HUD regulations issued pursuant thereto.**”*

The Cedar Terrace site and its neighborhood are not suitable under CFR 941.202 (b), because it does NOT further full compliance with the Civil Rights Act and the Fair Housing Act.

*“(c)(1) **The site for new construction projects must NOT be located in: (i) An area of minority concentration unless (A) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, ...***

The Cedar Terrace site and its neighborhood are not suitable under CFR 941.202 (c), because it is located in an area of minority concentration AND comparable opportunities for the target population do NOT exist outside areas of minority concentration.

*“(d) The site must promote greater choice of housing opportunities and **avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.**”*

The Cedar Terrace site and its neighborhood are not suitable under CFR 941.202 (d), because it is located in areas of high concentrations of low-income persons, including the 192 project-based vouchers at Sandpiper Cove just a few blocks away.

*“(e) The site must **be free from adverse environmental conditions**, natural or manmade, such as instability, **flooding**, septic tank back-ups, sewage hazards or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, vehicular traffic, rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is **seriously detrimental to family life** or in which **substandard dwellings** or other **undesirable elements predominate**, unless there is actively in progress a concerted program to remedy the undesirable conditions.”*

The Cedar Terrace site and its neighborhood are not suitable under CFR 941.202 (e), because it is located in an area of adverse environmental conditions, it is seriously detrimental to family life, and substandard dwellings and undesirable elements predominate in the neighborhood.

*“(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services **that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing.**”*

The Cedar Terrace and Magnolia Homes sites and neighborhoods are not suitable under CFR 941.202 (g), because they are located in areas that are NOT accessible to facilities and services that are equivalent to neighborhoods of similar unassisted housing.

### 3. Environmental

## Environmental Justice

*“Many communities are exposed to disproportionate health and environmental dangers because of their social, economic, or political position. **The impacts of agency projects must take account of these disproportionate dangers and alleviate them when recognized.** Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” establishes that the agency **“shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”** More information on environmental justice is in the Council on Environmental Quality publication, “Environmental Justice Guidance under the National Environmental Policy Act”. ”*

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FHLaws/EXO12898](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EXO12898)

In short, E.O. 12898 says that you can not use federal funds to subject minority and low-income populations to environmental conditions that are worse than those typically experienced by White middle-class populations.

There are five primary ways that building on the Cedar Terrace site will violate E.O. 12898:

### a. Flooding

Hurricane winds push ocean water ahead of them, so they cause the flooding of low lying areas near the coastline, and on barrier islands. The lower the land and the closer to the coastline the more risk it has from hurricane flooding. **E.O. 12898 and E.O. 11988 should eliminate hurricane flood zones from consideration for Public Housing as a matter of public safety and the prudent use of taxpayer funds!**

**E.O. 11988** mandates that a study be done to look for alternatives to using federal funds to build in a flood plain; something that the applicant has not yet produced for your review and consideration. There are many high-opportunity neighborhoods on the Mainland that do not have the flood risk from hurricanes found on Galveston Island.

### Description and Intent

***“Executive Order 11988 requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, “each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities for the following actions:***

- ***Acquiring, managing, and disposing of federal lands and facilities;***
- ***Providing federally-undertaken, financed, or assisted construction and improvements;***
- ***Conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.”***

### Summary of Requirements

***“The guidelines address an eight-step process that agencies should carry out as part of their decision-making on projects that have potential impacts to or within the floodplain. The eight steps, which are summarized below, reflect the decision-making process required in Section 2(a) of the Order.***

1. Determine if a proposed action is in the base floodplain (that area which has a one percent or greater chance of flooding in any given year).
2. Conduct early public review, including public notice.
3. Identify and evaluate practicable alternatives to locating in the base floodplain, including alternative sites outside of the floodplain.
4. Identify impacts of the proposed action.
5. If impacts cannot be avoided, develop measures to minimize the impacts and restore and preserve the floodplain, as appropriate.
6. Reevaluate alternatives.
7. Present the findings and a public explanation.
8. Implement the action.

Among a number of things, the Interagency Task Force on Floodplain Management clarified the EO with respect to development in flood plains, emphasizing **the requirement for agencies to select alternative sites for projects outside the flood plains, if practicable, and to develop measures to mitigate unavoidable impacts.**”

<http://www.fema.gov/plan/ehp/ehplaws/eo11988.shtm>

<http://www.fema.gov/plan/ehp/ehplaws/attachments-laws/eo11988.pdf>

[http://www.access.gpo.gov/nara/cfr/waisidx\\_03/44cfr9\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/44cfr9_03.html)

At this time, the applicant has not yet completed the 8-step evaluation process REQUIRED by E.O. 11988, identified alternative Public Housing sites outside of the floodplain, and presented a legitimate reason for building in a floodplain when many much better alternative sites exist, especially on the Mainland! Even when the applicant eventually completes the 8-step evaluation process, it should be obvious that the applicant has absolutely no legitimate justification for building in this high-risk floodplain, **at much higher cost to the taxpayers, and much higher risk of damage from future flooding, when many safer sites exist on the Mainland; sites that are also in high-opportunity neighborhoods.**

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/com\\_m\\_planning/environment/lawsandregs/compliance/forms/trngmanual/chapt2compliance](http://portal.hud.gov/hudportal/HUD?src=/program_offices/com_m_planning/environment/lawsandregs/compliance/forms/trngmanual/chapt2compliance)

## b. Wind

**Hurricanes are powered by warm ocean water**, so the minute that they move inland they begin losing wind speed. This means that any location right on the coast, including barrier islands, has the highest risk from wind damage.

**Locations for Public Housing near the coastline and on barrier islands are very poor choices as a matter of public safety and due to the higher cost to the taxpayers!**

**Building Public Housing on a barrier island puts Public Housing residents, and their personal property, at much greater risk from hurricane winds than if it was built only a few miles inland.**

## c. Contamination

There are **54 identified “Facilities of Interest” and/or “Brownfields” within 3,000 feet of the perimeter of the Cedar Terrace site**. 3,000 feet is the distance set forth for scrutiny in HUD Form 4128, Page 5, Item 23.

The environmental analysis contracted for by the applicant acknowledged some of these 54 sites and also tested water and soil samples from the site itself. **Many of the water and soil samples were contaminated with arsenic, lead, mercury and polyaromatic hydrocarbons (PAH) above acceptable levels**. Water contamination was ignored, because residents won't be using water from the site, but the water beneath the site can certainly transport contamination throughout the soil.

The 12 July 2013 letter from SCI Engineering, that is part of this application states, ***“soil samples collected from the site exceeded the regulatory threshold for residential***

**developments.”** SCI Engineering went on to recommend removal of the top 12” of soil, replacement with clean soil, and a “cap and cover” of the entire site.

<http://www.GalvestonOGP.org/GHA/SCI-Voluntary-Cleanup-Marked.pdf>

**These water and soil samples raise very serious questions about whether the proposed remediation is acceptable under E.O. 12898.** This project is in a low-income minority neighborhood and its target group of residents is additional impoverished minorities. **No developer would build apartments on this site if the target group were middle-class White residents, because it would surely fail to gain enough residents to be financially viable.** Therefore, it must violate the dictates of E.O. 12898 by subjecting low-income minorities to contamination risk that middle class White people would surely find unacceptable.

#### **d. Industrial/Commercial Neighborhood**

**The Cedar Terrace site is NOT in a viable residential area of the City.** Most of the area around it is has commercial or industrial zoning, and uses, or is abandoned residential. A visit to the site will make it obvious that this location will be **totally unappealing for an apartment development targeted at middle-class White residents** which means a Public Housing development cannot be built on this site for impoverished minority residents without violating E.O. 12898.

#### **e. Concentration of Public Housing**

The 7246 census tract containing the Cedar Terrace site is **also the location of the infamous and notorious Sandpiper Cove apartments that feature 192 project-based voucher units** that were financed with housing tax credits. Sandpiper Cove has created the worst crime problem in the entire city.

Building another 63 Public Housing and project-based voucher units within a few blocks of Sandpiper Cove will also violate many of the laws discussed above and the guidelines for the proper placement of tax credits units.

#### 4. Mixed Income

The pretense and excuse for building this project on this site is that it will be “mixed-income” and not 100% Public Housing. **The applicant wants you to believe that the “mixed-income” approach solves all of the problems outlined above. It does not.**

First, the whole theory of mixed-income is just the latest iteration in a whole series of failed Public Housing experiments. When the failures of the current fad can no longer be hidden, they just trot out a new experiment. **Professor Robert C. Ellickson has found little added benefit even from “successful” mixed-income developments.**

<http://www.uclalawreview.org/pdf/57-4-3.pdf>

However, this project will NOT be among the “successful” mixed-income developments. For it to be “successful”, middle-class people must occupy all of the market-rate units. There is no one in this city who actually believes that will happen, because of its location on the Cedar Terrace site. **If they are not filled with middle-class tenants, they will either remain empty, or eventually they will be filled with HCV holders.** In either case, the mixed-income aspect of the project will NOT be “successful”.

In addition, this city has over **7,000 vacant housing units**. That means that more than 23% of all the housing units in the city are vacant. That’s a higher percentage than in Detroit! **There is an over abundance of available housing, and, therefore, there is no need and no demand for these market rate units.** Given the small size of the City and the amount of vacant units, there is no incentive for middle class people to live in this neighborhood given the information about it shown above.

If middle class people even come to look at the development, they will be greeted by ***“a highly visible “witness barrier” as a warning barrier for future excavation on the site”***.

<http://www.GalvestonOGP.org/GHA/SCI-Voluntary-Cleanup-Marked.pdf>

In other words, they will be welcomed by signs noting the contamination on the site that the applicant wants them to live on.

### Conclusion:

The Texas Department of Housing and Community Affairs is the lead affordable housing agency for the State of Texas, and has the **primary responsibility to ensure the State’s compliance with the Fair Housing Act.**

The TDHCA also has the primary responsibility to ensure the State’s compliance with Chapter 301 of the Texas Property Code (The Texas Fair Housing Act) which closely mirrors the federal Fair Housing Act.

The TDHCA sets forth administrative rules **designed to allocate housing tax credits to developers in a manner that MUST Affirmatively Further Fair Housing** and that does not violate the Fair Housing Act.

In ICP v. TDHCA, the court found that the TDHCA was not allocating the housing tax credits in a manner that conformed to the requirements of the FHA in the Dallas Metropolitan Area.

The basic changes in TDHCA’s scoring system due to the ICP case were noted above, but the ruling and remedy also looks for **factors that should be used to EXCLUDE certain locations from eligibility to receive housing tax credits so as not to violate the FHA.** These factors include:

*“As a part of the Plan, the Department will continue to include the same or similar criteria in its QAPs for **disqualifying***

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

**a. A history of significant or recurring flooding;**

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

**f. Significant presence of blighted structures;**

**h. Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports.”** May 18, 2012 Remedial Plan Pages 13-14

<http://www.danielbesharalawfirm.com/Documents/TDHCA%20notice%20of%20proposed%20remedial%20plan.pdf>

**In short, there are numerous reasons for the TDHCA to exclude this site from further consideration.**

Finally, as stated above, the Galveston Open Government Project is NOT opposed to the construction of the Galveston Initiative II development; **we are simply opposed to it being built in a location that will offer so little opportunity to its impoverished minority residents, and that will violate so many laws.** Therefore, we ask you not to facilitate the violation of the Fair Housing Act, E.O. 12898, E.O. 11988 and CFR 941.202 by granting these housing tax credits. **Please reject this application until this development is moved to a suitable location; do not let these local “special interest” groups trap low-income minority families in this neighborhood for several more generations.**

Respectfully submitted,

David Stanowski, President  
Galveston Open Government Project, Inc.  
216 Seawall Boulevard  
Galveston, TX 77550  
409-621-2099  
[gogp@att.net](mailto:gogp@att.net)

**From:** [Galveston Open Government Project](#)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** Confirmation of the need to delay this application  
**Date:** Wednesday, August 28, 2013 7:12:53 AM

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## Environmental study pushes back housing start date

By JOHN WAYNE FERGUSON | Posted: Wednesday, August 28, 2013 12:02 am

GALVESTON — The start of construction of one of the island’s mixed-income housing projects will be delayed at least a month — and possibly into the new year.

A required environmental survey commissioned by McCormack Baron Salazar, the developer building the Cedar Terrace development, revealed levels of heavy metals and other chemicals in the soil. **The results required that another study be completed to determine what, if any, measures must be taken to address the problem.**

The housing authority had planned to break ground on Cedar Terrace in November, but officials said the extra environmental requirements would push that plan into December.

Cedar Terrace is planned to include 60 units for low- to middle-income residents in the area north of Broadway between 29th and 30th streets.

However, the housing authority has a Dec. 19 deadline to complete its agreement on the bonds it is using to finance the projects. State law requires that bond agreements be reached within 150 days of the start of negotiations. If the housing authority cannot close its agreement by Dec. 19, it will need to restart the process.

Housing authority Chairman Irwin “Buddy” Herz said the authority’s board of commissioners had urged McCormack Baron Salazar to work as quickly as possible.

“I think we made it very plain in our conversations that we expect that MBS get this matter taken care of, and we do not expect any delay which would take us past Dec. 19,” Herz said.

William Sullivan of the construction firm Sullivan Interests Inc., which will be building the Cedar Terrace development, told the board of commissioners Tuesday that the presence of contaminants on the site is not surprising.

The likely solution would be to pave over the area with concrete or asphalt to create a barrier between the dirt and future residents. In areas that are not paved, the construction company would likely have to remove a layer of dirt and replace it with clean soil.

Michael Saunders, director of the design and construction department at McCormack Baron Salazar, said **the company planned to submit its part of the more extensive environmental review at the end of September.**

“We wouldn’t build a place for kids that wasn’t entirely safe,” he said.



## **Galveston Open Government Project**

**A Government Watchdog Group**

[gogp@att.net](mailto:gogp@att.net)

**Office 409-621-2099**

<http://www.GalvestonOGP.org>

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**Thank you.**

**From:** [LeonardJLaMagna@aol.com](mailto:LeonardJLaMagna@aol.com)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** TDHCA TAX CREDITS GALVESTON, TX  
**Date:** Saturday, August 31, 2013 7:39:12 PM

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Dear Teresa,

My name is Leonard J LaMagna and I own and reside in Galveston. I had purchased my home seven years ago and spent over \$220,000.00 in renovations. The house was open this year to Galveston Historic Homes Tour with over 4,000 people attending. Our neighborhood is rebounding after Hurricane Ike and granting tax credits for the Cedar Terrace could and will probably have a negative impact in the historic district.

I am greatly concerned about the state granting tax records to the Cedar Terrace Project. It is in an area of buildings that have been abandoned and poor conditions exist in the entire area. I understand from the newspapers that the soil contains heavy metals and may have to be re mediated. Are we looking at another Love Canal which will come back and haunt us at a later date.

The previous Cedar Bayou Terrace had socio-economical problems leading to drugs and robberies in the area. This is not the type of housing that will invite folks to Galveston for investment. It could lead to housing prices falling.

I am asking for the state to please evaluate this situation and come to the conclusion that no tax credits should be given to the project.

Thank you for your consideration.

Leonard J LaMagna  
1616 Winnie  
P.O. Box 354  
Galveston, TX 77553

**From:** [Bob Kerr](#)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** Galveston Initiative II, LP  
**Date:** Wednesday, August 21, 2013 12:45:03 PM

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I understand that there is a move to rebuild Cedar Terrace. Unless there is a sudden influx of businesses or companies in Galveston that will create a large number of jobs I can't see why there is a need for a housing project. Why entice low income people into Galveston when there are no new industries or job opportunities in Galveston? This is definitely not in the best interest of the city.

**From:** [Alan Kamen](#)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** Request to Postpone Galveston Initiative II tax credit application  
**Date:** Wednesday, September 04, 2013 1:06:39 PM

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Dear Ms. Morales,

From what we understand, Galveston Initiative II is on TDHCA's Sept. 12, 2013 agenda for consideration of 4% tax credits.

We are asking you to postpone your consideration of their application, for the following reasons.

1) GHA has failed to complete the 8-step process, as required by E.O. 11988. This Federal Executive Order prohibits building in a flood plain without pursuing practicable alternatives, outlined by the 8 step plan. All of Galveston is in a flood plain, and there are many alternatives to building there. GHA has not pursued them, thereby increasing the cost of construction by a commonly accepted industry standard of +30% to build on the island, as well as exposing their clients to undue risk.

2) GHA has not yet come up with a plan to remediate the significant environmental issues found on this site, which includes unacceptable levels of arsenic, lead, and mercury, as determined by SCI Engineering in over 600+ pages of reports. GHA has committed to produce a remediation plan by Sept. 20, which then must be reviewed by TCEQ, a process which could take an additional 45 days. Even IF approved by TCEQ, the cost and extent of required remediation remains to be determined, ultimately affecting the financial feasibility of this project.

3) GHA neglected to submit a request to HUD for the waiver of requirement to conduct an open and competitive RFP for it's Project-Based Voucher units. Without benefit competitive bids, it could be difficult for TDHCA to truly evaluate this project. If HUD does NOT grant a waiver, the issue will be moot.

Therefore, we feel it is premature for TDHCA to consider Galveston Initiative II application for tax credits at this time.

We hope you will remove it from the Sept. 12 agenda, until such time as all the above information and requirements have been fulfilled.

Thank you,

Alan and Jul Kamen, property owners in Galveston

115 Cold Springs Dr.  
Georgetown, TX 78633

**From:** [Alan Kamen](mailto:Alan.Kamen)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** Public Comment to Galveston Initiative II, L.P.  
**Date:** Thursday, August 22, 2013 1:33:43 PM

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**22 August 2013**

**Re: Galveston Initiative II, L.P. aka the rebuilding of Public Housing at the Cedar Terrace site**

**To: The Texas Department of Housing and Community Affairs (TDHCA) Board of Directors  
221 East 11th Street Austin, Texas 78701-2410**

**Sent via email to: Teresa Morales [Teresa.Morales@TDHCA.State.TX.US](mailto:Teresa.Morales@TDHCA.State.TX.US)**

**To TDHCA:**

**We are writing in strong opposition to the granting of any tax credits for Galveston Initiative II, L.P. aka the rebuilding of Public Housing at the Cedar Terrace site, Galveston, TX. We submit the following reasons:**

**1) Violation of Fair Housing Act**

**The building of public housing--in any form--on the proposed site will result in a clear and flagrant violation of The Fair Housing Act. The act states that public housing must "not concentrate poverty or segregate minorities". The application before you for the Cedar Terrace site does both extremely well! ICP v. TDHCA, a similar case involving tax credits in Dallas, resulted in finding AGAINST TDHCA, for the exact same violation. However, theirs was not nearly as flagrant as the violation at Cedar Terrace will be, if allowed to proceed! The remedy in Dallas was to site tax-credit units in locations of less than 15% poverty. Cedar Terrace census tract is 61% poverty--the highest in the entire county! As for segregating minorities, it is 59.9% black and 34.1% Hispanic. A worse location could not have been found.**

**Violating the Fair Housing Act should be more than enough, in itself, to shut this entire project down. But wait, it gets worse!**

**2) Violation of Executive Order 11988, Building in a Flood plain**

**This order requires federal agencies to "avoid development in a flood plain when practicable alternatives are available". An 8-step process to identify alternatives must be followed and submitted in order to proceed. All of Galveston Island is in a flood plain, with the site at Cedar Terrace being one of the lowest lying and most susceptible. There are many other alternatives available within the county, offering safer conditions, better opportunities, at a fraction of the cost. For example, entire apt. complexes can be simply purchased on the mainland, in better neighborhoods, offering increased economic and educational opportunities, which are not in the floodplain, for as low as \$30k per unit, vs. the \$260-\$300k per unit put forth by Galveston Initiative II. But MBS has not pursued them.**

### **3) Violation of CFR 941.202: Site and Neighborhood Standards**

**These standards require a site being free from: adverse environmental conditions, harmful air pollution, excessive noise vibration, vehicular traffic, substandard dwellings, and undesirable elements. The Cedar Terrace site is home to ALL of these! It is a narrow strip of land situated between 2 major highways, train tracks, warehouses, water storage tanks, an abandoned brewery, and the port. It has been a commercial and industrial area for decades, for which it is best suited. The single other largest development there now is 192 unit Sandpiper Cove, a 100% project based Section 8 property. The remaining abandoned, substandard homes between the vacant lots are breeding grounds for drug activity and prostitution. This census tract has the highest crime rate and calls for service of any in the city. Recent soil testing has revealed 54 sites in the immediate area of the planned development which are considered "Brownfields" and contain unacceptable levels of arsenic, lead, and other contaminants. Costly remediation, if even attempted, would not solve the problem as it's location in a flood plain would eventually expose it to re-contamination spread by the inevitable flood waters which WILL OCCUR AGAIN!**

**Currently HUD is promoting the idea of locating public housing in High Opportunity Areas (HOA). In keeping with this, the judge's remedy in the ICP v. TDHCA ruling defines a HOA as having both a low incidence of poverty and ABOVE median income, in a recognized school district. Galveston has the lowest median income in the county, and 69.2% of children in the city are on free or reduced lunch.**

**If TDHCA does NOT want to become a party to concentrating poverty and segregating minorities, in a flood plain, on top of toxic waste sites, at a 30% increased cost of construction, along with higher flood and windstorm insurance rates, added costs of evacuation and relocation, soil remediation, in the lowest opportunity census tract in the county for jobs, education, with the lowest median income, then:**

**Please vote to DENY any tax credits for Galveston Initiative II, L.P.**

**Thank you,  
Jul and Alan Kamen, property owners in Galveston  
115 Cold Springs Drive  
Georgetown, TX 78633**

**From:** [Irma Hite](#)  
**To:** [Teresa.Morales@TDHCA.State.TX.US](mailto:Teresa.Morales@TDHCA.State.TX.US)  
**Subject:** TDHCA Tax Credits  
**Date:** Saturday, August 31, 2013 7:48:07 PM

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Teresa Morales,

My wife and I have raised our children in Galveston where we have lived for over 30years. We are well aware of the projects that confined people to the old part of town which is devoid of businesses, grocery stores, drug stores, banks, post offices, libraries and even convenience stores. Other than the projects this region consists of mostly vacant lots and a few abandoned buildings, but no real neighborhoods. The projects have been a magnets for drugs and crime. We understand that since Ike, people are given vouchers which allow them to live near jobs and schools.

We feel that vouchers are the way to help the needy and that construction of projects such as Cedar Terrace is not in the interest of the needy nor the greater community in which they are located. Consequently, we request that you deny tax credits to Cedar Terrace or any other project such as Magnolia Homes here in Galveston

Respectfully  
Gerald and Irma Hite  
1507 Winnie  
Galveston, TX 77550

# THE SEASONS

Galveston Island Resort

RE: TDHCA Tax Credits for Cedar Terrace

I am asking TDHCA to not award tax credits to the development at Cedar Terrace.

We own 556 units on Galveston Island, and there are so many vacancies on this island that building any additional units on the island would devastate our business. We are operating in a fragile environment at this moment and any additional units could put us in a negative cash flow.

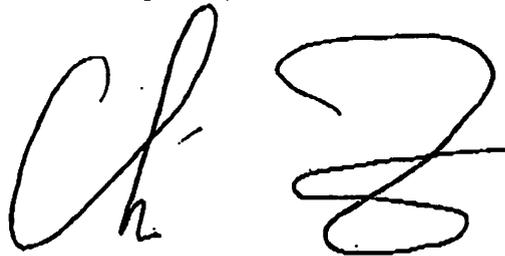
There are so many empty homes and units currently on the island that need to be rehabbed. The reason they have not been remodeled is because there are not enough residents to fill those vacancies. Otherwise, investors would repair and rent the units.

In addition, TDHCA has given out so many tax credits in the last four years on our small island it is already unfair to compete with subsidized rents. Our small island has dwindled from a population of 58,000 to 47,000 residents.

We urge you to please, DO NOT give any tax credits to this development.

Sincerely Yours,

Jon C Teachworth

Handwritten signature of Jon C Teachworth, consisting of a stylized 'J' and 'T' followed by a horizontal line.

**Casa Caribe**  
**515 First Street**  
**Galveston, Texas 77550**  
**(409) 765-9409**

August 14, 2013

RE: TDHCA Tax credits for Cedar Terrace, Galveston, Texas

Dear Sirs:

I am asking TDHCA not award any tax credits to the development at Cedar Terrace in Galveston, Texas.

We own 175 units on Galveston Island. With the existing vacancies here now building additional units would devastate our business. We are operating in a fragile economic environment and new tax credit units would negatively affect us.

Galveston Island has many vacant homes that need to be rehabbed and remodeled. Investors would repair these units if there were residents to fill them. The need is not there.

I also feel that enough tax credits have already been awarded in the past 4 years on the island. We do not need additional competition from these subsidized rental units.

Please DO NOT give any new tax credits for this development. Let them stand on their own and more fairly compete with us.

Sincerely,



D. Arne Henderson  
Vice President  
409-765-9409

August 19, 2013

RE: TDHCA Tax Credits for Cedar Terrace

I am asking TDHCA to not award any tax credits to the development at Cedar Terrace.

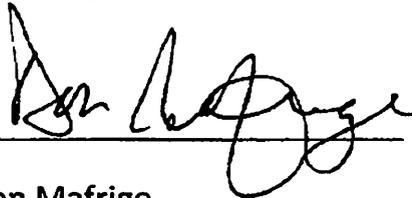
We own many units on Galveston Island, and there are so many vacancies on this island that building any additional units on the island would devastate our business. We are operating in a fragile environment at this moment and any additional units could put us in a negative cash flow.

There are so many empty homes and units currently on the island that need to be rehabbed and the reason they have not been remodeled is because there are not the residents to fill those units. Otherwise, investors would repair and rent those units.

Also, TDHCA has given out so many tax credits in the last four years on our small island it is already unfair to compete with subsidized rents. Our small island has also gone from a population of 58,000 residents to 47,000 residents.

So please DO NOT give any tax credits to this development.

Sincerely,



Don Mafrige  
409-771-7711

**FORT CROCKETT**

A P A R T M E N T S

4800 Seawall Boulevard • Galveston, TX 77551  
Telephone (409) 762-4800

**From:** [Galveston Open Government Project](#)  
**To:** ["Teresa Morales"](#)  
**Subject:** Galveston Initiative II Tax Credits  
**Date:** Tuesday, September 03, 2013 9:59:33 AM  
**Attachments:** [PBV-Waiver.pdf](#)

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Good morning Ms. Morales,

On Friday, we discovered that HUD regulations require that the Project-Based Voucher units for this application must be put out on an RFP for competitive bidding. Apparently, the Galveston Housing Authority just discovered this oversight in July (see attached). Since they did not put the PBV units out for competitive bidding, they have been scrambling to get a waiver from HUD (see attached). Based on the correspondence that we received (see attached), it appears that such a waiver has not been received from HUD as of Friday.

If the GHA cannot submit this waiver to the TDHCA, we believe that the Galveston Initiative II development should be pulled from consideration for tax credits at your September meeting, and not placed on a future agenda until its application is complete.

We have previously requested that this application be pulled, because the applicant has not yet completed and submitted their 8-Step Decision Making Process required under E.O. 11988, AND the applicant has not yet completed and submitted their Affected Property Assessment Report (APAR) and Remedial Action Plan (RAP) to the TCEQ. Therefore, the applicant does not have a "Comfort Letter" from TCEQ accepting their APAR and RAP and authorizing them to proceed, at this time.

No date certain has been given for the completion of the 8-Step Decision Making Process, but it would be nearly impossible for them to complete and submit it in time for your meeting on 12 September. This Process requires the applicant to identify and consider alternate building sites out of the flood plain. Why would the TDHCA consider an application for the present site until the alternatives have been

identified and properly considered?

The APAR and RAP are due to be submitted to the TCEQ on 20 September with a decision forthcoming 30-45 days after that so the Comfort Letter cannot be available in time for consideration at your meeting.

For these three reasons, we request that TDHCA pull the Galveston Initiate II application from consideration at its 12 September meeting.

Thank you for your consideration,

David Stanowski

President



# **Galveston Open Government Project**

**A Government Watchdog Group**

[gogp@att.net](mailto:gogp@att.net)

**Office 409-621-2099**

<http://www.GalvestonOGP.org>

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**Thank you.**

## Clover Nuetzmann

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**From:** Deyna Sims [dre@ghatx.org]  
**Sent:** Wednesday, August 28, 2013 10:21 AM  
**To:** 'Mona Purgason'; 'Clover Nuetzmann'  
**Subject:** FW: Galveston request for waiver of PBV competition requirements

Responsive document to ORR regarding vouchers in mixed income.

---

**From:** Scott Jepsen [mailto:jepsen@~~redacted~~group.com]  
**Sent:** Monday, July 15, 2013 3:30 PM  
**To:** dre@ghatx.org; Toni M. Jackson  
**Subject:** FW: Galveston request for waiver of PBV competition requirements

Got another message from Sue today saying that she and Roma have been trying to chase down the voucher people to get us an answer but with no luck today so they are going to try to have a meeting with them tomorrow.

Scott Jepsen | Partner  
EJP Consulting Group, LLC | 20201 21st Place NW | Shoreline, WA 98177  
206.890-3894 (phone) | (866) 584-1195 (fax) | 206.890-3894 (cell)  
~~Redacted contact information~~  
[www.ejpconsultinggroup.com](http://www.ejpconsultinggroup.com)

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**From:** Wilson, Susan [mailto:Susan.Wilson@hud.gov]  
**Sent:** Thursday, July 11, 2013 4:04 PM  
**To:** 'Scott Jepsen'  
**Cc:** Campanile, Roma  
**Subject:** Galveston request for waiver of PBV competition requirements

I just listened to your message, but I'm on my way out of the office. You said that given the project schedule for the closing of Cedar Terrace, if GHA needs to show that it has met the competition requirement in the voucher regs, it will have to send out an RFP on Monday.

Roma talked with me about this this afternoon and we tried to call Tony Jackson to discuss, but didn't reach her. Previously, I had asked Roma to talk to Laurie Rawson of the voucher office, but Laurie has been on vacation.

It's my opinion that Galveston needs a waiver of the voucher competition requirement and that there is good cause to grant it; however, I will need to check this out tomorrow with OGC and Milan's office. The main reason for a competition would be to solicit developers to provide project based voucher units. As the PHA has already procured MBS for Magnolia and Cedar, as the whole PBV scattered site part of Galveston's plan is in limbo, as the project couldn't get 9% credits from the state given the state's QAP requirements, as the units have to be built to comply with state/CDBG time constraints, as there is an MOA with the advocates to rebuild the units, I think there is plenty of good cause to grant a waiver.

I'm copying Dominique to get her initial feedback and will follow-up tomorrow. The PHA will have to put a waiver request together and provide the good cause, which I started to outline above.

**Director of Real Estate & Development**  
**Galveston Housing Authority**  
Office 409-765-1980  
Cell 409-771-5733

 Please consider the environment before printing this email.

**From:** Deyna Sims [<mailto:dre@ghatx.org>]  
**Sent:** Friday, July 19, 2013 2:44 PM  
**To:** 'Rodriguez, Dan'  
**Cc:** 'Edward.L.Pringle@hud.gov'; 'Mona Purgason'; 'Walls, Lorraine D'  
**Subject:** GHA - PBV Waiver Request

Mr. Rodriguez,

Attached please find a letter requesting a waiver to the selection procedures for utilizing project-based vouchers ("PBV") as set out in 24 CFR 983.51. Galveston Housing Authority has procured a developer to rebuild its public housing stock and a portion of that plan includes the use of project-based vouchers. Therefore, a statutory waiver is required to proceed without the requirement of preparing a public solicitation for the vouchers. The attached letter outlines the basis for this request. Please contact me if you have any questions or comments.

Thank you,

**Deyna Sims-Hobby**  
**Director of Real Estate & Development**  
**Galveston Housing Authority**  
Office 409-765-1980  
Cell 409-771-5733

 Please consider the environment before printing this email.

# HOUSING AUTHORITY

OF THE CITY OF GALVESTON, TEXAS

409 / 765-1900

77551



*Central Office 4700 Broadway*

**Mr. Dan Rodriguez**

US Department of Housing and Urban Development

1301 Fannin, Suite 2200

Houston, Texas 77002

Re: Galveston Housing Authority

**Waiver Request for Project Based Vouchers in Mixed Income  
Developments – Cedar Terrace and Magnolia Homes**

Mr. Rodriguez:

I am writing to request a waiver to the selection procedures for utilizing project-based vouchers ("PBV") as set out in 24 CFR 983.51. The Housing Authority of the City of Galveston, Texas d/b/a Galveston Housing Authority ("GHA") has procured a developer to rebuild its public housing stock and a portion of that plan includes the use of project-based vouchers. Therefore, a statutory waiver is required to proceed without the requirement of preparing a public solicitation for the vouchers.

On September 13, 2008, Hurricane Ike made landfall on the island of Galveston, Texas and caused damage to four public housing properties owned by GHA. The developments known as Cedar Terrace, Magnolia Homes, Palm Terrace and Oleander Homes were deemed uninhabitable and approved for demolition in 2009. The tenants in each of these properties were moved in preparation of the storm and ultimately relocated to temporary housing through the DHAP program. Since the demolition, forty (40) units have been rebuilt on the site formerly known as Palm Terrace but the other sites have remained vacant.

In 2011, GHA procured McCormack, Baron, Salazar ("MBS") to serve as its master developer for its rebuilding efforts. A part of the job of MBS was to develop a rebuilding plan that included mixed-income housing while responding to the needs of the island. GHA was also allocated funding for replacing and rebuilding the public housing units with CDBG-Disaster Recovery ("CDBG-DR") funding from HUD. However, due to the controversy of rebuilding traditional barrack style public housing along with the high costs of rebuilding, GHA has had to work over the last few years with former tenants, community stakeholders, the city and the General Land Office, to build a consensus for its rebuilding efforts. As a result, GHA entered into an agreement with local advocates to rebuild the public housing ("Lone Star Agreement") and the funds are subject to an agreement which also set out certain constraints on the rebuilding of the public housing ("Conciliation Agreement"). On September 28, 2012, GHA and the City of Galveston approved a plan for the rebuilding of GHA's public housing on two of its sites,

Cedar Terrace and Magnolia Homes (“Redevelopment Plan”) which incorporated some of the requirements set out in the Lone Star Agreement and Conciliation Agreement.

The Redevelopment Plan as adopted includes the development of mixed-finance, mixed income development on each of these sites. The sites propose a combination of market rate units, public housing units and project-based vouchers (“PBV”) units. Forty-nine percent (49%) of the units on each site will be market rate units with the remaining fifty-one percent (51%) of the units subsidized. The public housing/PBV units will be interspersed with the market rate units and will be rented to tenants with family incomes of no more than 60% of Area Median Income. Each site will be financed with the CDBG-DR funds, 4% tax credits, bonds and insurance proceeds and a long term ground lease from GHA. There will be a single asset partnership owner for each property as required by the proposed financing. The co-general partner of each owner will be the Galveston Public Facility Corporation (“General Partner”), an instrumentality of GHA.

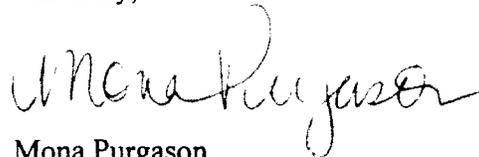
The project-based vouchers are imperative to the success of the proposed finance structure. Therefore, it is our assertion that the requested waiver should be granted for the following reasons:

- (i) The procedures set out in the statute require a public, competitive solicitation process to assure that there is public notice for the opportunity to utilize the project-based vouchers. GHA has met this requirement by procuring a developer through a public solicitation. Additionally, GHA has held numerous public meetings that allowed community input in its use of its available funds and finalizing the Redevelopment Plan;
- (ii) The Lone Star Agreement and Conciliation Agreement both set out certain constraints for the rebuilding of the public housing and those units that will count towards the replacement public housing units. As the Redevelopment Plan was prepared, the parties to those agreements agreed that project-based voucher units could count towards the public housing replacement units. HUD has reviewed each of these agreements and GHA has not been made aware of any objections to the terms of these agreements;
- (iii) After months of negotiation with advocates and the General Land Office (GLO), GHA and the General Land Office entered into an Subrecipient Agreement for CDBG-DR funds. This agreement specifically sets out project based voucher units will be part of the Cedar Terrace and Magnolia Homes developments. Moreover, this agreement was provided to HUD and GHA has not been made aware of any objections to the terms of the Subrecipient Agreement;
- (iv) HUD staff and LSLA negotiated a Memorandum of Agreement to be signed by GHA, the City of Galveston, and Lone Star Legal Aid (with acceptance formalized through HUD sign off) that included project based voucher units in the mixed income developments at Cedar Terrace and Magnolia Homes;

- (v) GHA was unable to utilize the competitive 9% tax credit because of the public support necessary for a viable application. Although this is not a scored application, the process still requires public notice and the approval of the award by the Texas Department of Housing and Community Affairs (“TDHCA”);
- (vi) Due to the time constraints necessary to obligate and expend the CDBG-DR funds by 2015, a structure using the 4% tax credits and bonds allow GHA the greatest scheduling flexibility without having to wait for the next 9% tax credit round which would be July 2014. The PBV units are necessary to assist with closing the financing gap created by the 4% tax credits; and
- (vii) Ultimately, the use of the project-based vouchers in the rebuilding plan will further the HUD mission and advance HUD program goals to develop viable, quality communities and affordable housing.

Should you have any questions or require additional information, I can be reached via telephone at (409) 765-1904 or via email at [ded@ghatx.org](mailto:ded@ghatx.org). Thank you in advance for your favorable consideration of this request.

Sincerely,



Mona Purgason  
Interim Executive Director

## Deyna Sims

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**From:** Campanile, Roma [Roma.Campanile@hud.gov]  
**Sent:** Thursday, August 08, 2013 12:08 PM  
**To:** 'Deyna Sims'  
**Cc:** Wilson, Susan  
**Subject:** RE: GHA - PBV Waiver Request

Deyna,

I think the information you provided to the FO below sums up the obstacles, deadlines and time delays involved in starting a procurement process now and strengthens the justification for the waiver.

Roma

**From:** Deyna Sims [mailto:dre@ghatx.org]  
**Sent:** Thursday, August 08, 2013 12:26 PM  
**To:** Campanile, Roma; 'Scott Jepsen'; 'Samson Babalola'; Toni M. Jackson  
**Subject:** FW: GHA - PBV Waiver Request

FYI

**From:** Deyna Sims [mailto:dre@ghatx.org]  
**Sent:** Thursday, August 08, 2013 11:00 AM  
**To:** larry.w.freeman@hud.gov  
**Cc:** 'Mona Purgason'; 'Rodriguez, Dan'  
**Subject:** FW: GHA - PBV Waiver Request

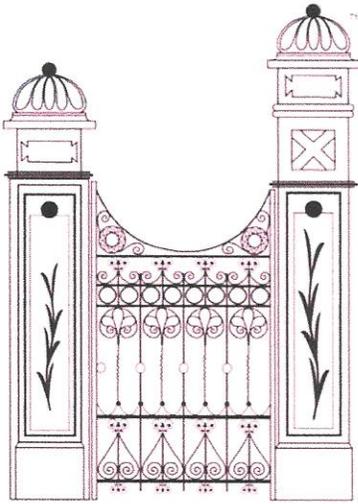
Mr. Freeman,

I have attached documentation to evidence the mutual understanding and knowledge of HUD, GLO, GHA, Lone Star Legal Aid, and advocates that **the redevelopment plan included the use of PBV within the mixed income developments:**

- a) The Subrecipient Agreement between GHA and GLO - Attachment A of this agreement clearly defines the mixed income initiative as two developments that include the use of project based vouchers. Our mixed income communities are being developed by MBS.
- b) Resolution and Redevelopment Plan - this plan was developed in conjunction with the advocates that signed the Conciliation Agreement, local advocates of Galveston, HUD, and the GLO and shows the use of project based vouchers.
- c) **Memorandum of Agreement** – this agreement, drafted by HUD and Lone Star Legal Aid, also outlines the development plan and the use of project based vouchers. **It was contemplated that HUD would present this agreement to the City for approval. To date, this has not occurred and I am unsure whether HUD is still pursuing this agreement with the City.**

In my opinion, based on the circumstances outlined in the waiver, as well as the supplemental information contained herein, **there is good cause to waive the requirement for competition of project based vouchers.** Further, **it is impractical at this time to select a different developer for this project given HUD and GLO imposed deadlines for replacement of affordable housing in Galveston.** Moreover, the use of the project based vouchers enable GHA to replace a greater number of affordable units in order to meet the mandates of the Conciliation Agreement. Lastly, GHA worked with HUD Headquarters (Diane Thompson, Roma Camponile and Susan Wilson) to determine the number of vouchers GHA is entitled to receive.

Please contact me with any questions.



*Galveston*  
East End Historical District Association

August 31, 2013

TDHCA

Attention: Teresa Morales

To Whom It May Concern:

The East End Historic District in Galveston TX is known for its many historical homes and is recognized as one of the best destinations for tourist visiting Galveston. This new development, Cedar Terrace, which is a short distance from our community will concentrate poverty in an area with abandoned homes, lack of services, and few jobs. The East End Historical District Association (EEHDA) feels this development would effect in a negative way the quality of life of its residents.

The TDHCA has awarded over the last 5 years many tax credit units on Galveston Island. We question the value of adding additional units. EEHDA urges you, DO NOT give any tax credits to this development.

Regards:

David Fortenberry

President EEHDA

**From:** [Galvestonbeach](#)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Subject:** TDHCA Tax Credits Galveston PEASE DENY  
**Date:** Friday, August 30, 2013 8:29:37 AM

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Our names are Richard and Linda Denson and we own Galveston Bay Properties, and we ask that you **DENY** any and all tax credits to the Cedar Terrace project for the following reasons:

It is located in the poorest census track in the county

It is an area of abandoned buildings and blight everywhere around the proposed site. (have you seen the sight, its only a 3 hour drive)

It's northern border is directly beside a 5 lane major highway (Harborside Drive).

The northern border is also directly across the street from a major container port that is loud and operates 24/7.

The financial feasibility is in question because there are no cost estimates to properly remediate the soil and remove heavy metals from the soil so it can be safe for children in the immediate area.

The federal flood study that is required by law has not been presented and all the facts are not known about the method of site selection and the flood study. So it is premature to make any type of tax credit decision until these studies are completed.

A well known national urban studies expert named Dr. Kirk McClure was hired by the Galveston Housing Authority and completed a study of the areas that would obey the fair housing laws and not rationally and economically segregate the poor. The conclusion he delivered in the fall of 2012 was that the Cedar Terrace and Magnolia sites both violated the Fair Housing Act. He named three census traces that were appropriate to build and these sites are not in those tracks.

Thank you for your time in this matter and if you have any questions, please write back and I will do my best to answer the questions.

**From:** [Galvestonbeach@aol.com](mailto:Galvestonbeach@aol.com)  
**To:** [Teresa.Morales@tdhca.state.tx.us](mailto:Teresa.Morales@tdhca.state.tx.us)  
**Cc:** [galvestonbeach@aol.com](mailto:galvestonbeach@aol.com)  
**Subject:** Cedar Terrace Tax Credits  
**Date:** Friday, September 06, 2013 11:45:10 AM

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Ms. Morales,

In looking over the proposal for the 4% tax credits in Galveston, I noticed the proposal started with the Conciliation Agreement. I would like to point out a few things about this agreement:

1. This agreement never states the development of public housing has to include mixed income units
2. This agreement never says anything about tax credit or market rate units.
3. The agreement says public housing must be replaced one for one, it does not state anywhere in the agreement it has to be on Galveston Island. (read to verify if you wish)
4. The agreement does say it must "affirmatively further fair housing" meaning it must obey the Fair Housing Act and not segregate by race or economics. (this development does both)
5. Has the GLO written a letter saying that this development does obey the Fair Housing Act, and if not, why?

It is important to understand that the CA **does not in any way** endorse, mandate, or demand you provide tax credits to this development.

There are three reasons mentioned on your web site to deny 4% tax credits:

1. Financial Feasibility. How can you judge the financial's on this proposal when you do not have the facts as to the remediation of the soil on the site. The cost could be between \$300,000.00 and \$5,000,000.00. Would a bank just give money to a project with unknown cost? No, they need to know everything about the potential cost. It would benefit the TDHCA to wait until those solid cost are projected to have a clear picture of the financing of this project.
2. The demographics of the area. Speaks for itself, fails miserably.

3. The census track of the proposed development. Again, fails miserably.

Thank you for your time in this matter.

Richard Denson

August 28, 2013

Texas Department of Housing and Community Affairs  
Waller Creek Office Building  
Teresa Morales  
507 Sabine Street  
Austin, Texas 78701

teresa.morales@tdhca.state.tx.us

Re: TDHCA Tax Credits for Cedar Terrace (Galveston initiative II) in Galveston

Dear Ms. Morales;

I am requesting TDHCA to deny tax credits to the 122 unit development at Cedar Terrace.

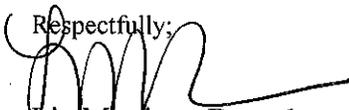
We own & operate 240 rental units on Galveston Island or in nearby cities in Galveston County, known as **Heritage at 9<sup>th</sup> Avenue** Apartments at 3404 9<sup>th</sup> Avenue North, Texas City, Tx. At the present time there are so many vacancies on this island and in the County that building additional subsidized units, in addition to those already planned, will devastate our business. We are operating in a fragile rental environment at this time, and any additional units could easily put us into a negative cash flow.

There are many vacant homes and apartment units currently on the island. Some 4,500 single family homes still need to be rehabbed due to damages from Hurricane Ike. These homes have not been remodeled because there is a diminished demand for all rentals due to the verifiable population loss post Ike. If there was a demand, investors would repair and rent these homes. The numerous vacant apartments (current island occupancy is at an average of 80%) would also be seriously impacted due to remodeled and refurbished apartment units still being vacant.

TDHCA has given out so many credits in the last four years that the marketplace is now unable to fairly compete with subsidized units that have lower operating costs due to various federal and state tax credits, property tax exemptions or caps. Our pre-Ike population of 58,000 residents is now down to 47,000.

Please do not give any tax credits to this development. Your doing so will only make matters worse and will most likely cause existing housing to go to waste and eventually be removed from the tax rolls. All of the land for all proposed units will not be on the tax rolls and 59 of these 122 proposed units will NOT be on the property tax rolls. This, coupled with the recent unprecedented increases in flood insurance taking place in October, will most likely be the beginning of the end for Galveston County private sector housing. Competing with units not paying comparable property taxes constitutes unfair competition.

Respectfully;



Liz Martinez-Dvorak

01-05-13 11:59 001

5h

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 12, 2013**

Presentation, Discussion, and Possible Action regarding approval for publication in the *Texas Register* the 2013-1 HOME Multifamily Development Program Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, the Department has executed the Fiscal Year 2013 Grant Agreement with the U.S. Department of Housing and Urban Development (HUD), which provides access to 2013 HOME Investment Partnership Program funds;

**WHEREAS**, staff has identified a total of \$21,692,495 in HOME funds, including \$9,214,455 in FY 2012 funding, that is available to be earmarked for the HOME Multifamily Development Program;

**WHEREAS**, staff proposes these funds be made available for award to multifamily applications under a 2013-1 HOME Multifamily Development (MFD) Program Notice of Funding Availability (NOFA);

**WHEREAS**, twenty four (24) applications for HOME funds were submitted in conjunction with Competitive (9%) Housing Tax Credit requests in accordance with a Board policy adopted at the December 2012 board meeting and these will be considered for awards of funds under this NOFA; and

**WHEREAS**, staff proposes setting aside \$5,000,000 for applications layered with Noncompetitive (4%) Housing Tax Credits, as described in the December 2012 Board Resolution;

**Now therefore, it is hereby,**

**RESOLVED**, the 2013 HOME Multifamily Development Program NOFA is hereby approved, in the form presented to this meeting, for publication in the *Texas Register*; provided, however, that staff may make non-substantive technical corrections as deemed necessary.

**BACKGROUND**

The 2012-1 HOME MFD NOFA closed on September 30, 2012, with approximately \$1,019,455 remaining from over \$37,000,000 available in the NOFA. Since the amount of HOME funds remaining were insufficient to publish another NOFA and a grant agreement from HUD for FY 2013 was not anticipated to be executed until spring 2013, the Board passed

a resolution on December 13, 2012. The resolution allowed 9% HTC applicants to request HOME funds in coordination with their HTC applications, insofar as the applicants understood the risks, parameters, and guidelines associated with requesting HOME funds prior to TDHCA receiving its 2013 allocation of HOME funds and the subsequent publication of a HOME MFD NOFA. In accordance with the Board resolution, applications received under the resolution will be deemed to have been received under this NOFA for funds made available under this NOFA.

Staff received 24 Competitive HTC applications with requests for Department HOME funds under the above referenced December 2012 policy. Of those 24 9% HTC applications, 13 have received Housing Tax Credit Awards and remain active for potential HOME awards under this NOFA, provided funding remains available after the regional allocation period ends. Another 10 HOME and tax credit layered applications were received but did not receive an award of tax credits. These applications, however, remain active and potentially eligible for a HOME award if they receive a tax credit award from the tax credit waiting list. One application was terminated and is no longer eligible for a HOME award.

The 2013 HOME MFD NOFA will make available funding for the General and Community Housing Development Organization (CHDO) Set-Asides with 23 applications already pending.

Set-Aside	Total Available	Applications Pending	Requested Funds for Applications Pending
General	\$15,692,455	21	\$16,505,000
CHDO	\$6,000,000	2	\$1,653,000

The funding made available under each set-aside will first be regionally allocated until October 25, 2013. After October 25, 2013, funding will collapse and be made available statewide, except in local HOME Participating Jurisdictions as restricted in Texas Government Code, Chapter 2306. During the initial period of regional allocation, any applications requesting funds not exceeding the amounts made available within a sub-region will take priority overall other allocations, including the 23 with pending requests. After the collapse, the 23 pending applications will be prioritized for award as described in the December 2012 policy and funds will be made available on a first-come first served basis to any new applications received.

Additionally, after October 25, 2013, \$5,000,000 of the \$15,692,455 will be made available only to applications layered with Noncompetitive (4%) Housing Tax Credits and \$6,000,000 will be available to all applicants that qualify under the CHDO Set-Aside.

Since the amount of funds available under the NOFA was not known at the time of the Board resolution in December, staff limited HOME fund requests to \$1,000,000 per applicant for applications layered with 9% HTC. Now that the available amounts are known, staff is recommending the maximum request for applications not layered with 9% HTC to be \$3,000,000 under both the General and CHDO Set-Asides. This change is reflected in the attached NOFA for your approval. These higher award limits are recommended by staff in response to typical gap financing needs for 4% tax credit applicants and for those few applicants using the HOME program in conjunction with market rate financing.

Staff has incorporated salient updates to the HOME Final Rule (24 CFR Part 92) in the NOFA to make applicants aware of new program requirements in effect for 2013 awards. In general, the updates will have the greatest impact on CHDO applicants.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOME INVESTMENT PARTNERSHIPS PROGRAM**

**MULTIFAMILY DEVELOPMENT PROGRAM  
2013-1 NOTICE OF FUNDING AVAILABILITY (NOFA)**

- 1) **Summary.** The Texas Department of Housing and Community Affairs (the “Department”) announces the availability of up to \$21,692,495 in funding from the HOME Investment Partnerships Program for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 10 (2013 Uniform Multifamily Rules) in effect at the time Application is submitted, the Federal HOME regulations governing the HOME program found at 24 CFR Part 92 (HOME Final Rule), and Chapter 2306 of the Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Section 104(d) of Housing and Community Development Act of 1974, Davis-Bacon Act for labor standards, 24 CFR §§84.42 and 85.36 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Where the 2013 Uniform Multifamily Rules are in conflict with the revised Federal HOME Final Rule the Federal HOME regulations shall govern. HUD funded assistance connected to construction, rehab, demolition, or other public construction must also comply with HUD Section 3 requirements (24 CFR Part 135); Section 3 requires HUD funded housing and community development activities to give, to the greatest extent feasible (and consistent with existing Federal, State and local laws and regulations) job training, employment, contracting and other economic opportunities to Section 3 residents and business concerns. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.
  
- 2) **Allocation of HOME Funds.**
  - a) These funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been earmarked for Multifamily Development activities involving acquisition or refinance and new construction or acquisition or refinance and rehabilitation of affordable housing. The funds made available under this NOFA are subject to the following set-asides:
    - i) **CHDO Set-Aside.** Approximately \$6,000,000 in funds are set-aside for eligible Community Housing Development Organizations (CHDOs) meeting the requirements of 24 CFR §92.2 and this NOFA. Of the funds available under the CHDO Set-Aside,

\$3,000,000 is available under the 2013 allocation and \$3,000,000 is remaining under the 2012 allocation. Funds under the CHDO Set-Aside are subject to the Regional Allocation Formula (RAF) and are not available for developments located within other HOME Participating Jurisdictions.

ii) **General Set-Aside.** Approximately \$15,692,455 in funds shall be available to all other Applications proposing Multifamily Development that meet the requirements of this NOFA, the HOME Program Rule, and Federal HOME regulations. Of the funds available under the General Set-Aside, \$9,478,000 is available under the 2013 allocation, \$1,019,455 is remaining under the 2012 MFD NOFA, and \$5,195,000 is available from program income that must be reallocated to HOME activities. Funds under the General Set-Aside are subject to the Regional Allocation Formula (RAF) and are not available for developments located within other HOME Participating Jurisdictions.

(1) Under the General Set-Aside, \$5,000,000 is reserved for applications layered with 4% housing tax credits. The balance will be available to applications layered with 9% housing tax credits and non-housing tax credit applications. Upon expiration of this NOFA, all General Set-Aside funds that remain available may be awarded for any application received prior to December 31, 2013, regardless of whether or not the application is layered with 4% housing tax credits.

b) An Applicant may have only one active Application per Development at a time and may only apply under one set-aside at a time. Additionally, the following processes will be followed for the review and award of Applications:

(1) Once all funds from the CHDO Set-Aside have been awarded, all pending Applications remaining in this set-aside will be considered for funds under the General Set-Aside;

(2) The Department may require completion of the CHDO Certification process for Applications that originally applied under the CHDO Set-Aside but are receiving funds from the General Set-Aside in order to meet the Department's future obligations to award funds for CHDO activities.

c) This NOFA will be conducted as an open Application cycle and funding will be available on a first-come, first-served basis. All funds under the CHDO or General Set-Asides are subject to the Regional Allocation Formula (RAF). Should any funds remain after awarding all eligible applications under the RAF, the funds will collapse statewide at 5:00 p.m. on October 25, 2013 and become available to award to all other eligible applications regardless of region. The RAF tables for each set-aside can be accessed at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Pursuant to the December 13, 2012 Board resolution, HOME applications received in conjunction with the 2013 9% Housing Tax Credit Application Round are deemed to have been received under this NOFA. Applications submitted during the regional allocation period that do not request more than available within the applicable sub-region will have the first priority. The 2013 HOME and 9 percent tax credit layered applications that were awarded commitments of 9 percent Housing Tax Credits will be given top priority after the regional allocation collapse.

- d) Based on the availability of funds, Applications for the statewide open Application cycle will be accepted until 5:00 p.m. on December 30, 2013. The request for project funds may not be less than \$200,000, regardless of the set-aside under which an application is being submitted, and may not exceed the maximum on a per application basis as shown in Table 1:

Table 1

	Layered with 9% Tax Credits	Not Layered with 9% Tax Credits
CHDO	\$1,000,000	\$3,000,000
General	\$1,000,000	\$3,000,000

- e) Each CHDO that is awarded HOME funds may also be eligible to receive a grant of up to \$50,000 for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies.

**3) Implementation of the Revised HOME Final Rule.**

- a) If owners choose to adopt and follow a written tenant selection policy that limits eligibility or gives a preference to a particular segment of the population as permitted in the written agreement, the limitation or preference must not violate nondiscrimination requirements in 24 CFR §92.350. Since funding from other Federal programs that may limit eligibility to a particular segment of the population may not be known at the time of application, the applicant will be required to state whether or not a preference will be used for tenant selection prior to closing.
- b) Owners must use the HUD Utility Schedule Model for utility allowances. The utility allowances will be calculated by the Department on an annual basis and provided to the Owner with a deadline for implementation.
- c) Housing must be occupied by eligible tenants within six months following completion of construction.
- d) Repayment of HOME funds will be required:
- (1) For any housing unit that has not been rented to eligible tenants within 18 months of construction completion.
  - (2) If the project is not completed within 4 years of the date funds were committed.
- e) If a CHDO is created or sponsored by a for-profit entity, the officers and employees of the for-profit entity may not be officers or employees of the CHDO.
- f) If a CHDO is acting as a developer or sponsor, the CHDO must have paid employees with housing development experience who will work on the HOME-assisted project. For its first year of funding as a CHDO, the CHDO may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization.
- g) If a CHDO is acting as an owner, it must demonstrate the capacity to act as owner of a project including:
- i) The ability to hire and oversee the developer that rehabilitates or constructs the housing.

- ii) The ability to hire or contract with an experienced project manager to oversee all aspects of the development.
  - iii) The ability to own and operate rental housing for the duration of the federal affordability period.
- 4) **Site and Development Restrictions.** Developments must meet the requirements at 10 TAC §10, Subchapter B, as applicable.
- 5) **Public Notification Requirements.** All Applicants must comply with public notification requirements in 10 TAC §10.203.
- 6) **Application and Threshold Criteria.** An Application must be compliant with all applicable requirements in 10 TAC §10, Subchapter C. Each Application will be evaluated by the Real Estate Analysis division in accordance with 10 TAC §10, Subchapter D. In addition, an Application must be consistent with the Direct Loan requirements in 10 TAC §10.307.
  - a) **Affirmative Marketing.** Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act. Applicants will be required to use HUD form 935.2a to meet these requirements.
  - b) **CHDO Certification.** Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth by 10 TAC §23.80, Application Procedures for Certification of Community Housing Development Organization (CHDO).
    - i) CHDO Certification Applications must be submitted with each application for Multifamily Development funds.
    - ii) CHDO Certification Applications must meet the requirements of 10 TAC §23.80 at the time of Application submission.
- 1) **Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC §10, Subchapter E, as well as the Compliance Monitoring requirements in 10 TAC §10, Subchapter F.
- 2) **Application Submission**
  - a) All Applications submitted under this NOFA must be received on or before **5:00 p.m. December 30, 2013**. The Department will accept Applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date the NOFA Summary is published in the *Texas Register* until the deadline date. For questions regarding this NOFA, please contact Andrew Sinnott, Multifamily Loan Program Specialist, at [andrew.sinnott@tdhca.state.tx.us](mailto:andrew.sinnott@tdhca.state.tx.us).
  - b) In accordance with the December 13, 2012 Board resolution, 9% Housing Tax Credit Applications that requested HOME funds are deemed to have been received under this NOFA.

- c) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs. Applicants layered with tax-exempt bonds must have submitted an application to the Bond Review Board prior to submitting an application for HOME funds.
- d) All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials.
- e) Applicants must submit the Application materials as detailed in the Multifamily Programs Procedures Manual (MPPM) in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the MPPM in effect at the time the Application is submitted.
- f) The Application consists of several parts as described in the MPPM. A complete Application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete Applications or improperly compiled Applications will not be accepted. Applicants must submit the Application materials as detailed in the MPPM in effect at the time the Application is submitted.
- g) Third Party Reports. Applications that have not submitted third party reports due to a later deadline under the housing tax credit program may be held as incomplete Applications until the housing tax credit deadline for submission of third party reports. Such Applications will not be considered complete Applications and shall not be assigned a "Received Date" until the third party reports are received.
- h) All Application materials including manuals, NOFAs, program guidelines, and all applicable HOME rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of the HOME Final Rule. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
- i) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$1,000.00 per Application. Payment must be in the form of a check, cashier's check, or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. TDHCA Application fees are not reimbursable costs under the HOME Program.
- j) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department

strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

k) Applications must be sent via overnight delivery, or delivered by hand to:

**Multifamily Finance Division  
Texas Department of Housing and Community Affairs  
Attn: Misael Arroyo  
221 East 11th Street  
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Multifamily Finance Division  
Texas Department of Housing and Community Affairs  
Attn: Misael Arroyo  
Post Office Box 13941  
Austin, TX 78711-3941**