

HOUSING DIVISION – MONTANA BOARD OF HOUSING

MACo Building
2715 Skyway Drive – Helena Montana 59602
November 9, 2015

ROLL CALL OF BOARD

- MEMBERS:** J.P. Crowley, Chairman (Present)
Bob Gauthier (Present)
Doug Kaercher (Present)
Ingrid Firemoon (Present)
Jeanette McKee (Present)
Pat Melby (Present)
Sheila Rice (Present)
- STAFF:** Bruce Brensdaal, Executive Director
Mary Bair, Multifamily Program
Ginger Pfankuch, Accounting & Finance Manager
Vicki Bauer, Homeownership Program
Mary Palkovich, Servicing Program
Stacy Collette, Operations Manager
Paula Loving, Executive Assistant
Kellie Guariglia, Multifamily Program
Angela Heffern, Accounting Program
Todd Jackson, Multifamily Program
Charlie Brown, Homeownership Program
Jeannene Maas, Homeownership Program
Rena Oliphant, Multifamily Program
Dave Parker, Section 8 Program Manager
- COUNSEL:** Greg Gould, Luxan and Murfitt
John Wagner, Kutak Rock
- UNDERWRITERS:** Mina Choo, RBC Capital
- OTHERS:** Kay Midro, Aloha Noblehouse, Inc.
Jodie Paxton, Aloha Noblehouse, Lake County Housing
Brad Butler, Aloha Noblehouse, Inc.
Adam Gratzner, Freedom's Path
Mike Tolomeo, Freedom's Path
Don Sterhan, Mountain Plains Equity Group, Inc.
Eileen Piekarcz, Courtyard Apartments – RCAC
Marney McCleary, Courtyard Apartments – CAPNM
Jennifer Seigel, Courtyard Apartments – RCAC
Chris DSchaak, City of Wolf Point, Mayor
Marvin Presser, Citizen – Wolf Point
Duane Kurokawa, Wolf Point

Julie Stiteler, Homeword, Inc.
Ashley Grant, Homeword, Inc.
Tim Howard, Sterling
Wendy Thomas, City of Bozeman
Gene Leuwer, GL Development
Beki Brandborg, Echo Enterprises
Jeff Rupp, Bozeman HRDC
Harlen Wells, Missoula Housing Authority
Desera Towle, Human Resource Council, Missoula
Jim Morton, Human Resource Council, Missoula
Robert Robinson, Human Resource Council
Craig Taylor, Communities for Veterans
Kent Moamer, The Meadows
Lucy Brown, Housing Authority of Billings
Patti Webster, Housing Authority of Billings
Heather Grenier, HRDC, Bozeman
Tracy Menezes, HRDC, Bozeman
Ted Barklby, City of Belgrade
Bill Haynes, Collaborative Design
Lori Collins, Whitfish Housing Authority
Alex Burkhalter, Housing Solution, LLC
Daryn Murphy, Commonwelath Development
Jason Cronk, Immanuel Lutheran Communities
Merrylee Olson, YWCA, Billings
Natalie Paridy, Aloha Noblehouse
Brad McMillan, Aloha Noblehouse
Peter Gray, Benefis Health Systems
Steve Dymoke, GMD Development
Revonda Stordahl, Butte Affordable Housing
Chancy Kittson, Blackfeet Housing
Gary MacDonald Roosevelt County
Same Long, Summit Housing group
Rusty Snow, Summit Housing Group

CALL MEETING TO ORDER

Chairman JP Crowley called the Montana Board of Housing (MBOH) meeting to order at 8:30 a.m. (Tape 1 – 4:34) Introductions were made. (Tape 1 – 4:35) Bruce Brensdaal reviewed the meeting and webinar process. Chairman asked for any public comment not on the agenda (Tape 1 – 10:43).

Kia Peterson, NeighborWorks Montana, presented MBOH staff, Vicki Bauer and Jeannene Maas, recognition awards for all their support given to NeighborWorks. (Tape 1 – 53:57) Sheila Rice stated that through the years, both Vicki and Jeannene have reviewed numerous grants which have allowed NeighborWorks to provided services across Montana.

APPROVAL OF MINUTES

Doug Kaercher moved to approve the August 10, 2015 MBOH Board meeting and Bob Gauthier seconded the motion (Tape 1 – 12:46). Chairman Crowley asked for comments. The August 10, 2015 Board meeting minutes were passed unanimously. Ingrid Firemoon moved to approve the August 20, 2015 Board Conference call and Doug Kaercher seconded the motion. (Tape 1 – 13:17) Chairman Crowley asked for comments. The August 20, 2015 Board meeting minutes were passed unanimously.

FINANCE PROGRAM

Ginger Pfankuch provided Finance program update. (Tape 1 – 13:47) There is a slight increase in the weighted average yield, which is a sign of recovery of the decrease in June 2015. The debt service has been calculated for December 2015. The 2015B Bond issue was completed on October 29, 2015 for \$30 million.

HOMEOWNERSHIP PROGRAM

Vicki Bauer provided a Homeownership Program update. (Tape 1 – 15:50) In the month of October, MBOH received 40 new loan reservations, of which, 39 loans were from the regular bond program. The current interest rate is 3.25%. There were four Veteran's home loans at the rate of 2.25%, leaving a balance of \$8.95 million. Two Score Advantage loans and three 80% Combined loans were reserved during October. Vicki stated of the recent bond issuance, the balance is approximately \$2 million, so MBOH will bridge reservations and the Board will look at a new bond issuance after the first of the year.

MULTIFAMILY PROGRAM

Mary Bair brought to the Board the 2015 CMA requirement. (Tape 1 – 15:55) Through the review of the threshold process for Housing Credits 2016 applications, it was discovered that two applications, (Antelope Court and Stower Commons) did not submit CMA or appraisal. Antelope Court was funded with 2015 Housing Credits. This was an oversight by the MBOH staff and wanted to disclose it to the Board.

Mary Bair introduced Greg Gould, Luxan Murfitt, who reviewed threshold issues for the six applications submitted for the 2016 Housing Credits. (Tape 1 – 21:27) Please see Attachment I. Chairman Crowley asked for public comments.

Alex Burkhalter, Housing Solutions, appreciated Mr. Gould's analysis of the issue at hand. (Tape 1 – 32:28) Mr. Burkhalter stated this was not intentional and based on the previous year's application which was not funded, Housing Solutions did not realize this was an issue. Mr. Burkhalter assured the Board this item will be submitted in the future.

Don Sterhan, Mountain Plains Equity Group, is acting as consultant on one project and a co-developer on another project and stated he believes the interpretation is unclear. (Tape 1 – 33:35) The application was submitted based on the 2015 interpretation. Mr. Sterhan stated this requirement does not apply to projects which the land is donated

and a CMA does not provide any meaningful information when the land is basically at no cost.

Lucy Brown, Housing Authority of Billings, apologized for the confusion of the lack of cover letter with the application. (Tape 1 – 39:49) Ms. Brown stated she was confused because it was not on the checklist and a Letter of Intent had been previously sent. Ms. Brown stated this project could really help with the waitlist of 2,200 for affordable housing.

Kay Midro, Aloha Noblehouse, apologized for the lack of CMA/Appraisal in the application. (Tape 1 – 41:05) This was an oversight and Ms. Midro hoped the application would be able to continue. In addition, the issue of the lack of notarized signature of the market study analyst has been corrected.

Sheila Rice moved that the Board hereby finds, determines and resolves: ((Tape 1 – 44:12)

1. That the 2016 Housing Credit Application submitted for the Red Fox Apartments Project failed to meet the mandatory Threshold Requirement to include a cover letter summarizing the Project (2016 QAP, Section 8, pp. 26-27);
2. That despite the failure to include such cover letter, the Application is substantially complete and late submission of the cover letter is not a substantial revision to the Application and is permitted under the 2016 QAP as a minor correction (2016 QAP, Section 8, p. 26); and
3. That upon Applicant's submission of a cover letter summarizing the Project, as required under the Threshold Requirements of the 2016 QAP (2016 QAP, Section 8, pp. 26-27), such cover letter to be delivered to and received by MBOH no later than November 16, 2015 at 5:00 p.m., the Application be evaluated and scored as provided in the 2016 QAP; provided, however, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

Pat Melby seconded the motion. (Tape 1 – 45:45) Chairman Crowley asked for comments. Sheila stated that through her experience of application writing she relies heavily on checklists and so she can relate to the issue. The motion was passed unanimously. (Tape 1 –46:20)

Sheila Rice moved that the Board hereby finds, determines and resolves: (Tape 1 – 46:52)

1. That the 2016 Housing Credit Applications submitted for the Gateway Vista, Noblehomestead, Polson Landing, Stower Commons and Timber Meadows Projects failed to meet the mandatory Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 ("CMA Requirement") (2016 QAP, Section 8, pp. 26-27);
2. Section 4 of the 2016 QAP provides that the Board, in its discretion, may waive any requirement of the QAP if it determines such waiver to be in the

best interests of MBOH, the HC program or the application cycle (2016 QAP, Section 4, pp. 22);

3. Waiver of the Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 (“CMA Requirement”) (2016 QAP, Section 8, pp. 26-27), as applicable to all 2016 Applications for Housing Credits, is in the best interests of the MBOH, the HC program and the application cycle. The Board deems consideration of all Applications without regard to such requirement to be in the best interests of the MBOH, the HC program and the application cycle;
4. That the Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 (“CMA Requirement”) of the 2016 QAP be and hereby is waived in its entirety for all 2016 Housing Credit Applications, and that any comparative market analyses or appraisals submitted with or as part of any such Applications pursuant to such Threshold Requirement shall be disregarded and not further considered for any purpose in the 2016 Allocation Round; and
5. That all submitted 2016 Applications for Housing Credits be evaluated and scored as provided in the 2016 QAP; provided, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

Pat Melby seconded the motion. (Tape 1 – 49:10) Chairman Crowley asked for comments. Jeanette McKee stated she would appreciate when questions arise, for applicants to call staff in order to avoid these possible disqualifications. Pat Melby stated 20% of all applicants did not comply with this requirement, which questions the clarity. Bruce Brensdaal state staff and applicants have a very active communication. Greg Gould also reminded the Board that through the recent lawsuit, staff does not unilaterally have the ability to interpret the requirements. The motion was passed unanimously. (Tape 1 – 51:40)

Sheila Rice moved that the Board hereby finds, determines and resolves: (Tape 1 – 52:10)

1. That the 2016 Housing Credit Application submitted for the Noblehomestead Project failed to meet the mandatory Threshold Requirement to include a Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized (2016 QAP, Section 8, pp. 26-27), in that the analyst’s signature on the certificate was not notarized;
2. That submission of a corrected Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized, is permitted under the 2016 QAP as a minor correction to such Application (2016 QAP, Section 8, p. 26); and

3. That upon Applicant's submission of such corrected Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized, as required under the Threshold Requirements of the 2016 QAP, such corrected Market Study to be delivered to and received by MBOH no later than November 16, 2015 at 5:00 p.m., the Application be evaluated and scored as provided in the 2016 QAP; provided, however, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

Pat Melby seconded the motion. (Tape 1 – 53:40) Chairman Crowley asked for comments. The motion was passed unanimously.

Bruce Brensdaal reviewed the presentation process of the 2016 Housing Credits. (Tape 1 – 29:24) The order of presentation was created by a random electronic draw during the meeting and each applicant had ten minutes to present their project. (Tape 1 – 1:20:52) Public comment was allowed at the beginning or after the presentation.

- Riverview Meadow Apartments, Whitefish (Tape 1 – 1:09:56) – Developer is Commonwealth Development Corporation – Daryn Murphy stated the proposed project will be the new construction of 36 family units. Lori Collins, Whitefish Housing Authority, provided update on the area. (Tape 1 – 1:14:40) There was no public comment for the project.
- Aspen Place III, Butte – Developer is Butte Affordable Housing/Thomas Development Co. (Tape 1 – 1:22:06) – Ravonda Storhdal and Thomas Mannschreck stated the proposed project will be the new construction of 32 family units. No public comment was made.
- Valley Villa 1 & 2, Hamilton – Developer is Beki Glyde Brandborg (Tape 1 – 1:30:30) – Beki Brandborg stated the proposed project will be the acquisition/rehabilitation of 34 family units. Bernadette Sandright (sp) provided public comment in support of project.
- Little Jon Apartments, Big Fork – Developer is GMD Development/Homeword (Tape 1 – 1:43:00) – Steve Dymoke and Julie Stiteler stated the proposed project will be the acquisition/rehabilitation of 32 family units. No public comment was made.
- Stower Commons, Miles City – Developer is Housing Solutions (Tape 1 – 1:56:40) – Alex Burkhalter stated the proposed project will be the new construction of 24 family units. No public comment was made.
- Blackfeet Homes VI, Browning – Developer is Blackfeet Housing (Tape 1 – 2:04:30) – Chancy Kittson stated the proposed project will be the new construction of 30 family units. No public comment was made.
- Polson Landing, Polson – Developer is Housing Solutions (Tape 1 – 2:14:32) – Alex Burkhalter stated the proposed project will be the new construction of 40 family units. Bob Gauthier made a comment for the project. (Tape 1 – 2:24:36).
- Big Sky Villas, Belgrade – Developer is HRDC District IX, Inc. (Tape 1 – 2:25:18) – Heather Grenier stated the proposed project will be the

- acquisition/rehabilitation of 24 family units. Ted Barkley made public comment in support of project. (Tape 1 – 2:34:40)
- Red Fox Apartments, Billings – Developer is Housing Authority of Billings (Tape 1 – 2:42:16) – Lucy Brown and Patti Webster stated the proposed project will be the new construction of 30 family units. Julie Stiteler made comment in support of project.
 - Noblehomestead, Pablo – Developer is Aloha Noblehouse (Tape 1 – 2:53:29) – Jodi Paxton and Kay Midro stated the proposed project will be the new construction of 24 family units. Brad Butler made comment in support of project. (Tape 1 – 3:30:30)
 - Rose Park Apartments, Bozeman – Developer is Summit Housing Group, LP (Tape 2 – 3:16) – Sam Long stated the proposed project will be the new construction of 16 senior units. Wendy Thomas, Jeff Rupp and Carson Daly made comment in support of project. (Tape 2 – 12:26)
 - Gateway Vista, Billings – Developer is Billings YWCA and CR Builders LLC (Tape 2 – 16:14) – MerryLee Olson from Mountain Plains Equity Group stated the proposed project will be the new construction of 24 family units. No public comment was made.
 - Timber Meadows, Kalispell – Developer is Immanuel Lutheran Communities and CR Builders, LLC (Tape 2 – 26:44) – Jason Cronk and Don Sterhan from Mountain Plains Equity Group stated the proposed project will be the new construction of 40 senior units. No public comment was made.
 - North Star Apartments, Wolf Point – Developer is GL Development (Tape 2 – 36:00) – Gene Leuwer stated the proposed project will be the new construction of 28 family units. Bill Haynes, Gary MacDonald, Duane Kurokawa, Chris DSchaak and Pat Wills comment was made in support of the project. (Tape 2 – 40:40)
 - Meadows Senior Apartments, Lewistown – Developer is Thies and Talle Enterprises (Tape 2 – 52:10) – Julie Stiteler, Homeward, and Ken Talle stated the proposed project will be the acquisition/rehabilitation of 35 senior units. No public comment was made.
 - Nicole Court Senior Apartments, Stevensville – Developer is District XI Human Resource Council (Tape 2 – 1:01:14) – Jim Morton and Harlan Wells from Missoula Housing Authority stated the proposed project will be the new construction of 16 senior units. Bob Robinson, Desera Cole, Tim Hunter, and Bill Perrin made comment in support of project. (Tape 2 – 1:11:38)
 - Cascade Ridge Senior Living – Phase II, Great Falls (Tape 2 – 1:19:58) – Developer is Benefis Cascade Ridge, LLC and CR Builders, LLC – Peter Gray from Benefis stated the proposed project will be the new construction of 16 senior units. No public comment was made.
 - Sweetgrass Commons, Missoula – Developer is Homeward, Inc. (Tape 2 – 1:24:30) – Julie Stiteler stated the proposed project will be the new construction

of 26 family units. No public comment was made.

- Freedom's Path at Fort Harrison, Helena – Developer is Communities for Veterans Montana LLC (Tape 2 – 1:37:06) – Adam Gratzer stated the proposed project will be the acquisition/rehabilitation of 22 family units and new construction of 20 family units. Mike Tolomeo, made comment in support of project. (Tape 2 – 1:48:08)
- Courtyard Apartments, Kalispell – Developer is Recapitalization Montana, LLC and Rural Integrity, LLC (Tape 2 – 1:55:05) – Marney McClearey from Community Action Partnership of Northwest Montana and Eileen Pickard from RCAC stated the proposed project will be the acquisition/rehabilitation of 32 family units. No public comment was made.

Mary Bair provided the Board with the Multifamily program update. (Tape 2 – 2:05:00)

EXECUTIVE DIRECTOR UPDATE

Bruce Brensdal updated the Board on the recent NCSHA Annual Conference which took place in Nashville. (Tape 2 – 2:05:21) Pat Melby and Sheila Rice attended for the Board.

Stacy Collette provided the Operations update. (Tape 2 – 2:06:00) Staff has been working on the job profiles.

Penny Cope provided the Marketing update. (Tape 2 – 2:08:10) The Open House at Hillview in Havre was a complete success. The 2016 Housing Conference will be in Kalispell on May 23-25, 2016 and the Board is encouraged to attend. The Montana Financial Education Coalition conference is scheduled for February 24, 2016 in Helena.

Meeting adjourned at 2:00 p.m. (Tape 2 – 2:12:26)

Sheila Rice, Secretary

Date

**LEGAL MEMORANDUM TO BOARD
REGARDING HOUSING CREDIT APPLICATION
THRESHOLD REQUIREMENTS**

Greg Gould, Board Counsel

January 12, 2016

This memorandum is provided to assist the Board in its consideration of requests from several 2016 Housing Credit Applicants for reconsideration of MBOH staff determinations that their applications do not meet the 2016 QAP's threshold requirements for further consideration.

2016 QAP Provisions

The 2016 QAP specifies a number of threshold requirements that applications must meet in order to be further considered for an award of credits. The 2016 QAP provides in pertinent part:

Threshold Requirements Are Mandatory

Threshold Requirements are mandatory for all Letters of Intent and Applications. Letters of Intent and Applications received not meeting all Threshold Requirements or other requirements of this QAP will be returned un-scored and will receive no further consideration. Fees will not be returned.

MBOH staff may communicate with Applicants for purposes of providing interpretive guidance or other information or for purposes of clarifying Applications. MBOH staff may allow minor corrections to Applications, but will return and will not further consider Applications requiring substantial revision or those that are substantially incomplete.

2016 QAP, p. 26.

The 2016 QAP further provides:

Applications must:

3. Include a cover letter summarizing the Project, limited to 2 pages, which will be provided to MBOH Board members within one week following the application deadline;

7. Market Study prepared and signed by a disinterested third party analyst, with certificate (included in Exhibit B) signed by analyst and notarized. Market Studies must be completed within six (6) months prior to the submission date of the Application, must have the market analyst complete a physical inspection of the market area within one (1) year of the Application and must adhere to minimum market study requirements in Exhibit B.

13. All Applications for land and/or Acquisition transactions must include a comparative market analysis ("CMA") or an appraisal done by an independent (non-related) party. A CMA or appraisal is not required on leased land.

ATTACHMENT I

2016 QAP, pp. 26-27. The CMA Requirement (item 13) was first added in the 2015 QAP and remained the same in substance in the 2016 QAP.

Note that Section 4 of the 2016 QAP provides that MBOH Board, in its discretion, may waive any requirement of the QAP if it determines such waiver to be in the best interests of MBOH, the HC program or the application cycle.

THRESHOLD DETERMINATIONS

On initial review of 2016 applications, MBOH staff determined that certain applications did not meet one or more of these threshold requirements as follows:

- The following application did not include a cover letter as required by threshold requirement 1:
 - Red Fox
- The following applications did not include a comparative market analysis or appraisal as required by threshold requirement 13:
 - Gateway Vista (new construction, donated land)
 - Noblehomestead (new construction, purchased land)
 - Polson Landing (new construction, purchased land)
 - Stower Commons (new construction, purchased land)
 - Timber Meadows (new construction, donated land¹)
- The following application included a Market Study, but the analyst's certificate signature was not notarized as required by threshold requirement 7:
 - Noblehomestead

MBOH staff determined that the plain language of these threshold requirements is clear and unambiguous and, based upon the Court determination in the Fort Harrison suit, that staff has no authority to waive them. Accordingly, staff notified the Applicants of the respective threshold deficiencies, and that the applications will be returned and will not be considered further in the 2016 Application round. Staff allowed each applicant the opportunity to indicate where the missing item was included in the application or to request Board review of the staff determination. In response, all of the above-referenced Applicants have submitted written requests for Board review.

DISCUSSION

I will discuss separately each issue and the options available to Board for each issue.

I. Cover Letter Requirement.

The 2016 QAP plainly states that applications must include a cover letter summarizing the Project. The Applicant states that it did not think a cover letter was needed because the Board already had received the Letter of Intent submitted 3 months earlier. The Applicant "assumed" the Board had what it needed. The application as submitted clearly failed to meet the threshold requirement. Moreover, the details of projects may change from the letter of intent stage to the application stage.

Options: The following options are available to address this issue.

¹ The Application's response to the threshold requirement for "proof of ownership" indicates that the sponsor has a buy/sell agreement for purchase of the land for \$320,000. The Application later indicates that the sponsor will contribute the land to the development. A land cost of \$1.00 is indicated in the Application's use of funds. For purposes of this discussion, the land will be considered to be donated.

ATTACHMENT I

- (1) Determine that the threshold requirement was not met and that the application will be returned unscored and not considered further [ALTERNATIVE MOTION1]².
- (2) Waive the Cover Letter requirement for all Applicants [ALTERNATIVE MOTION2].
- (3) Allow the Applicant to submit the cover letter as a “minor correction” to the application [ALTERNATIVE MOTION3].

I recommend that the Board adopt option 1 or option 3. I do not recommend waiver of this requirement, as this omission was made by only a single applicant and there appears to be no basis to conclude that the requirement was unclear or that the omission was caused by any lack of clarity or MBOH action.

II. Comparative Market Analysis/Appraisal Requirement (“CMA Requirement”).

Some of the Applicants argue that this requirement does not apply to new construction or to land acquired by donation from project sponsors. One Applicant states that the failure to submit a CMA was simply an oversight by its analyst.

Interpretation of CMA Requirement. The Applicants argue that the CMA Requirement does not apply to new construction projects or to projects involving donated land, based upon the language of the requirement. They argue that the CMA provision lacks clarity, is confusing and is subject to various interpretations. They argue that terminology used in this requirement is not used or applied consistently throughout the QAP, i.e., the defined term “Acquisition.” They argue that the phrase “land and/or Acquisition transactions” can be read to include only Acquisition/Rehab projects and not new construction projects. Applicants argue that receipt of the project land by donation is not a land transaction, as the term “transaction” includes only a purchase or sale, and not a donation.

In my opinion, these arguments lack merit. The phrase “land and/or Acquisition transactions” plainly includes and applies to any land transaction and to any Acquisition transaction. Only leased land is excepted from this requirement.

The requirement plainly includes “Acquisition transactions”. The 2016 QAP defines “Acquisition” to mean “obtaining title, lease or other legal control over a property for purposes of an HC Project.” This would, at a minimum, apply to and include Acquisition/Rehab projects, none of which are at issue here.

The requirement, however, also applies to and includes “land transactions.” This phrase is very broad and plainly includes any land transaction. “Transaction” certainly includes a business deal or a purchase or sale, but it also includes “something performed or carried out” and “any activity involving two or more persons.” Black’s Law Dictionary (7th Ed. 1999). Whether land, title to land or the right to use and possess land is obtained by donation from one party to another or for use in a new construction project, it is nonetheless within the plain meaning of “land transaction.” There is no confusion, lack of clarity or ambiguity in the language of this requirement. Moreover, even if “Acquisition” is used to reference Acquisition/Rehab projects, the additional phrase “land transaction” plainly includes other types of projects. If the Board or staff had intended to except donated land or new construction, it could have and presumably would have specifically so provided, as it did with leased land.

Applicants argue that it is unnecessary for MBOH to know the value of the land for new construction projects, because the purchase and sale agreement identifies the cost of the land. This argument, however, misapprehends the purposes behind the requirement. Purchase and sale agreements may be affected by the relationship between the parties or other factors. The CMA or appraisal provides documentation to support the reasonableness of such land costs.

Applicants also argue that the CMA requirement applies only to projects involving the acquisition and rehabilitation of existing structures, because the value of the land is critical to a proper determination of the amount of 4% acquisition credits allowed and to prevent unscrupulous applicants from manipulating land value to increase 4% acquisition credits.

² See attached Alternative Motions provided for the Board’s consideration.

ATTACHMENT I

Applicants, however, do not point to any MBOH Board or Staff pronouncement that this was the sole purpose of the CMA Requirement. Staff intent behind this requirement included providing support for the reasonableness of land costs for purposes of overall project and square footage cost and the amount of credits awarded. Staff intended the requirement to apply broadly and so worded the provision, excepting only leased land.

One developer argues that a CMA makes sense where the project is burdened by a land acquisition cost, the reasonableness of which must be supported by a CMA or appraisal. But where the land is being contributed to the partnership, the value is meaningless because there is no land cost and no cost to justify as reasonable. Such a requirement adds to the project cost but provides no relevant information and could cause the project to incur the cost of 2 appraisals (note, however, that a market analysis meets the requirement and an appraisal is not required). While this may be a good argument that the requirement *should be revised* to exclude donated land, it does not make the plain language of the requirement any less clear.

In my opinion, the language of the requirement plainly and unambiguously applies to all land transactions, including new construction and donated land projects, and should not be interpreted in the strained fashion suggested by the Applicants.

Prior Failure to Apply CMA Requirement. The Applicants point out that substantially the same CMA Requirement was included in the 2015 QAP, but that no CMA or appraisal was submitted for 2 new construction applications that were scored, evaluated and advanced for Board consideration. These 2 projects were Stower Commons and Antelope Court, both of which involved purchased land.³ One of those applications received an award of 2015 credits (Antelope Court). The developers of 4 of the 5 applications at issue here state that they relied upon the Board's consideration of these applications in 2015 without submission of a CMA in determining that no CMA was required for 2016 applications.

MBOH Staff agree that the referenced 2015 applications did not include the required CMA or appraisal but nonetheless were scored and submitted to the Board for consideration, with Antelope Court receiving an award of credits. Staff indicate, however, that the failure to apply and enforce the CMA requirement to these applications was an oversight and an error. Staff did not make any interpretation or determination that the requirement was inapplicable to those applications; rather, Staff simply erred in failing to note the applicants' omission of this requirement and inadvertently passed the applications on to the scoring and evaluation process.

Nonetheless, the fact that the CMA requirement was not applied to these 2015 applications is troublesome. It is difficult to determine whether all of the 2016 Applicants involved here were aware of that omission at the time they submitted their 2016 applications. The Stower Commons Applicant, however, clearly had to be aware when it submitted its 2016 application that it had not submitted a CMA or appraisal with its 2015 application and that it was not disqualified from further consideration in the 2015 round. An Applicant that in fact knew this information and relied upon it in not submitting a CMA or appraisal could make a case that it justifiably relied upon the Board's nonapplication of the same requirement in the prior round and that it cannot be penalized for doing so.

Note that one Applicant that failed to submit a CMA or appraisal, Noblehomestead, does not argue that the CMA requirement is inapplicable, but simply submits that its contractor, Gill Group, omitted the appraisal from its report.

Options: The Board has the following options to address this issue.

- (1) Determine that the threshold requirement was not met and that the application will be returned unscored and not considered further [ALTERNATIVE MOTION4]⁴.
- (2) Interpret the CMA Requirement as being inapplicable to new construction and donated land projects [ALTERNATIVE MOTION5].

³ The Stower Commons 2015 Application indicated that the partnership had a buy/sell agreement to purchase the land for \$255,000. The Antelope Court 2015 Application indicated that the HRDC owned the land but the cost of the land to the partnership was indicated as \$20,000. For purposes of this memo, both projects are considered to include purchased land.

⁴ See attached Motion Alternatives provided for the Board's consideration.

ATTACHMENT I

- (3) Waive the CMA Requirement for all Applicants and direct that any submitted CMAs/Appraisals will not be used for any purpose in scoring, evaluation or award [ALTERNATIVE MOTION6].
- (4) Allow the Applicants to submit the CMA or Appraisal as a “minor correction” to the applications [ALTERNATIVE MOTION7].

Based upon legal considerations and risks, I recommend option 3 (Alternative Motion 6), waiver of the requirement for all applicants. Although I believe the language of the requirement is clear and unambiguous, at least some of the Applicants involved were aware of and may have relied upon the fact that the requirement was not applied to some 2015 applications. Therefore, enforcement of the requirement under option (1) would not be equitable. In my opinion, the plain language cannot reasonably be interpreted to exclude new construction or donated land projects as contemplated under option (2). Further, the requirement is substantive and option (4) would set a problematic precedent.

If the Board determines that waiver of the requirement is in the best interests of MBOH, the HC program or the application cycle, I recommend that the requirement be waived for all applications (option (3)) and that the CMAs and appraisals that were submitted by other applicants will not be used for any purpose in scoring, evaluation or award. Waiver of the requirement for only some but not all applicants may create actual or perceived inequities among the Applicants.

III. Notarial Acknowledgement Requirement.⁵

The 2016 QAP mandatory threshold requirements include submission with the application of a Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized. Noblehomestead’s application included a Market Study with a certificate that was signed by the analyst but not notarized as required by the QAP. Noblehomestead acknowledges that the analyst’s signature on the Market Study certificate was not notarized but argues that this was a rare oversight by its market analyst, Gill Group. Noblehomestead begs the Board’s grace based upon Gill’s professionalism. The notarization is a clear threshold requirement which, by the Applicant’s own admission, was not met.

Options: The Board has the following options to address this issue.

- (1) Determine that the notarization requirement was not met and that the application be returned unscored and not considered further [ALTERNATIVE MOTION8]⁶.
- (2) Allow the Applicant to resubmit the certificate with notarization as a “minor correction” to the application [ALTERNATIVE MOTION9].

I do not recommend waiver of this requirement, as this omission was made by only a single applicant and there appears to be no basis to conclude that the requirement was unclear or that the omission was caused by any lack of clarity or MBOH action.

I will be available at the Board meeting to answer any further questions you may have.

⁵ If Noblehomestead’s Application is disqualified based upon the CMA requirement, the Board need not consider or decide this issue.

⁶ See attached Motion Alternatives provided for the Board’s consideration.

HOUSING DIVISION – MONTANA BOARD OF HOUSING

INDEX OF ALTERNATIVE MOTIONS

- 1 Red Fox Cover Letter Omitted – Application Disqualified
- 2 Red Fox Cover Letter Omitted – Requirement Waived For All Applicants
- 3 Red Fox Cover Letter Omitted – Correction Permitted

- 4 Applicants' CMA/Appraisal Omitted – Applications Disqualified
- 5 Applicants' CMA/Appraisal Omitted – Interpretation: Requirement Not Applicable
- 6 Applicants' CMA/Appraisal Omitted – Requirement Waived For All Applicants
- 7 Applicants' CMA/Appraisal Omitted – Corrections Permitted

- 8 Noblehomestead Notarization Omitted – Application Disqualified
- 9 Noblehomestead Notarization Omitted – Correction Permitted

ALTERNATIVE MOTION NO. 1

Moved that the Board hereby finds, determines and resolves:

4. That the 2016 Housing Credit Application submitted for the Red Fox Apartments Project failed to meet the mandatory Threshold Requirement to include a cover letter summarizing the Project (2016 QAP, Section 8, pp. 26-27);
5. That the Application be returned to the Applicant un-scored and receive no further consideration for an award of Housing Credits in the 2016 Allocation Round, as provided in the 2016 QAP (2016 QAP, Section 8, p. 26); and
6. That Applications fees will not be returned, as provided in the 2016 QAP (2016 QAP, Section 8, p. 26).

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 2

Moved that the Board hereby finds, determines and resolves:

1. That the 2016 Housing Credit Application submitted for the Red Fox Apartments Project failed to meet the mandatory Threshold Requirement to include a cover letter summarizing the Project (2016 QAP, Section 8, pp. 26-27);
2. Section 4 of the 2016 QAP provides that the Board, in its discretion, may waive any requirement of the QAP if it determines such waiver to be in the best interests of MBOH, the HC program or the application cycle (2016 QAP, Section 4, pp. 22);
3. Waiver of the Threshold Requirement to include a cover letter summarizing the Project on pp. 26-27 of the 2016 QAP, as applicable to all 2016 Applications for Housing Credits, is in the best interests of the MBOH, the HC program and the application cycle. The information to be included in the cover letters was provided to MBOH previously in the Projects' respective Letters of Intent and the Board deems consideration of all Applications without regard to the cover letter to be in the best interests of the MBOH, the HC program and the application cycle;
4. That the Threshold Requirement to include a cover letter summarizing the Project on pp. 26-27 of the 2016 QAP be and hereby is waived in its entirety for all 2016 Housing Credit Applications, and that any cover letters submitted with or as part of any such Applications shall be disregarded and not further considered for any purpose in the 2016 Allocation Round; and

ATTACHMENT I

5. That all submitted 2016 Applications for Housing Credits be evaluated and scored as provided in the 2016 QAP; provided, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 3

Moved that the Board hereby finds, determines and resolves:

1. That the 2016 Housing Credit Application submitted for the Red Fox Apartments Project failed to meet the mandatory Threshold Requirement to include a cover letter summarizing the Project (2016 QAP, Section 8, pp. 26-27);
7. That despite the failure to include such cover letter, the Application is substantially complete and late submission of the cover letter is not a substantial revision to the Application and is permitted under the 2016 QAP as a minor correction (2016 QAP, Section 8, p. 26); and
8. That upon Applicant's submission of a cover letter summarizing the Project, as required under the Threshold Requirements of the 2016 QAP (2016 QAP, Section 8, pp. 26-27), such cover letter to be delivered to and received by MBOH no later than November 16, 2015 at 5:00 p.m., the Application be evaluated and scored as provided in the 2016 QAP; provided, however, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 4

Moved that the Board hereby finds, determines and resolves:

1. That the 2016 Housing Credit Applications submitted for the Gateway Vista, Noblehomestead, Polson Landing, Stower Commons and Timber Meadows Projects failed to meet the mandatory Threshold Requirement to include a comparative market analysis or appraisal as required Threshold Requirement No. 13 ("CMA Requirement") (2016 QAP, Section 8, pp. 26-27);
2. That the 2016 Housing Credit Applications submitted for the Gateway Vista, Noblehomestead, Polson Landing, Stower Commons and Timber Meadows Projects be returned to the respective Applicants un-scored and receive no further consideration for an award of Housing Credits in the 2016 Allocation Round, as provided in the 2016 QAP (2016 QAP, Section 8, p. 26); and
3. That Applications fees for the respective Applications will not be returned, as provided in the 2016 QAP (2016 QAP, Section 8, p. 26).

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 5

Moved that the Board hereby finds, determines and resolves:

1. That the Board adopts, ratifies and approves the following interpretation of the 2016 QAP Threshold Requirement No. 13 (2016 QAP, Section 8, pp. 26-27): Threshold Requirement No. 13 of the 2016 QAP, set forth in Section 8 at pages 26-27, does not apply to 2016 Housing Credit Applications: (a) for new construction projects, or (b) with respect to any land donation transaction proposed or completed for or as part of any project; and

ATTACHMENT I

2. That the failure to submit a Comparative Market Analysis or Appraisal with or as part of a 2016 Application pursuant to 2016 QAP Threshold Requirement No. 13 shall not require return of or disqualification of such Application from further consideration or award of credits to the extent such Application proposes a new construction project or a project including a land donation transaction, and such Applications shall be evaluated, scored and further considered as provided in the 2016 QAP.

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 6

Moved that the Board hereby finds, determines and resolves:

6. That the 2016 Housing Credit Applications submitted for the Gateway Vista, Noblehomestead, Polson Landing, Stower Commons and Timber Meadows Projects failed to meet the mandatory Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 ("CMA Requirement") (2016 QAP, Section 8, pp. 26-27);
7. Section 4 of the 2016 QAP provides that the Board, in its discretion, may waive any requirement of the QAP if it determines such waiver to be in the best interests of MBOH, the HC program or the application cycle (2016 QAP, Section 4, pp. 22);
8. Waiver of the Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 ("CMA Requirement") (2016 QAP, Section 8, pp. 26-27), as applicable to all 2016 Applications for Housing Credits, is in the best interests of the MBOH, the HC program and the application cycle. The Board deems consideration of all Applications without regard to such requirement to be in the best interests of the MBOH, the HC program and the application cycle;
9. That the Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 ("CMA Requirement") of the 2016 QAP be and hereby is waived in its entirety for all 2016 Housing Credit Applications, and that any comparative market analyses or appraisals submitted with or as part of any such Applications pursuant to such Threshold Requirement shall be disregarded and not further considered for any purpose in the 2016 Allocation Round; and
10. That all submitted 2016 Applications for Housing Credits be evaluated and scored as provided in the 2016 QAP; provided, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 7

Moved that the Board hereby finds, determines and resolves:

1. That the 2016 Housing Credit Applications submitted for the Gateway Vista, Noblehomestead, Polson Landing, Stower Commons and Timber Meadows Projects failed to meet the mandatory Threshold Requirement to include a comparative market analysis or appraisal as required by Threshold Requirement No. 13 ("CMA Requirement") (2016 QAP, Section 8, pp. 26-27);
2. That the late submission of such comparative market analyses or appraisals is permitted under the 2016 QAP as minor correction to such Applications (2016 QAP, Section 8, p. 26); and
3. That upon each respective Applicant's submission of a comparative market analysis or appraisal, as required by Threshold Requirement No. 13 ("CMA Requirement") of the 2016 QAP, such

ATTACHMENT I

comparative market analysis of appraisal to be delivered to and received by MBOH no later than November 16, 2015 at 5:00 p.m., the Application be evaluated and scored as provided in the 2016 QAP; provided, however, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 8

Moved that the Board hereby finds, determines and resolves:

1. That the 2016 Housing Credit Application submitted for the Noblehomestead Project failed to meet the mandatory Threshold Requirement to include a Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized (2016 QAP, Section 8, pp. 26-27), in that the analyst's signature on the certificate was not notarized;
2. That the Application be returned to the Applicant un-scored and receive no further consideration for an award of Housing Credits in the 2016 Allocation Round, as provided in the 2016 QAP (2016 QAP, Section 8, p. 26); and
3. That Applications fees will not be returned, as provided in the 2016 QAP (2016 QAP, Section 8, p. 26).

DATED this 9th Day of November 2015.

ALTERNATIVE MOTION NO. 9

Moved that the Board hereby finds, determines and resolves:

4. That the 2016 Housing Credit Application submitted for the Noblehomestead Project failed to meet the mandatory Threshold Requirement to include a Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized (2016 QAP, Section 8, pp. 26-27), in that the analyst's signature on the certificate was not notarized;
5. That submission of a corrected Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized, is permitted under the 2016 QAP as a minor correction to such Application (2016 QAP, Section 8, p. 26); and
6. That upon Applicant's submission of such corrected Market Study prepared and signed by a disinterested third party analyst, with a certificate signed by the analyst and notarized, as required under the Threshold Requirements of the 2016 QAP, such corrected Market Study to be delivered to and received by MBOH no later than November 16, 2015 at 5:00 p.m., the Application be evaluated and scored as provided in the 2016 QAP; provided, however, that this determination shall not be deemed to waive any requirement or provision of the 2016 QAP except as specifically provided herein.

DATED this 9th Day of November 2015.