2016 QAP COMMENTS and DSHA RESPONSE

DSHA would like to thank all our partners for their feedback and comments to the 2016 Qualified Allocation Plan (QAP). DSHA has summarized the comments and feedback by category.

Preservation

- We urge DSHA to maintain the $2,607,282 set-aside for proposals involving the preservation and rehabilitation of existing multifamily rental housing in the final 2016 QAP and maintain the points awarded to proposals involving preservation. In addition, we urge DSHA to balance incentives in areas of opportunity and preservation and consider working with state utilities to develop energy efficiency programs for multifamily housing.

DSHA Response: DSHA will maintain the preservation set-aside and all preservation points for 2016 and will continue to strive to balance all housing needs with the resources available to DSHA and our partners.

Definitions

- Special Populations: We are pleased to see Veterans added to the list of special populations that receive points. This is a group with significant need.

- We applaud the addition of Veterans to the Special Populations section.

DSHA Response: We appreciate your comments and will continue our efforts to reduce veteran homelessness and continue to provide affordable housing opportunities for all veterans.

- Historic Housing**:** Please clarify the statement that "state credits will be available by conversion."

DSHA Response: Conversion is a long standing term for DSHA and a real estate term defined as the date upon which the Loan converts to permanent financing, which follows the Construction Period and upon satisfaction of all conditions set forth in Loan Agreement(s).

- Interim Income: The new highlighted section needs some clarification to understand what DSHA means.

DSHA Response: DSHA added the following to the Interim Income definition: "Funding of an approved reserve from interim income will not be considered to have caused a deficit in operations due to off-site relocation. Additionally, interim income may not be used as collateral for any loan (other than a standard assignment of rents and leases), operating deficit guarantee or letter of credit." DSHA does not want the operations account funds to be used as collateral for any loan requirements of other lenders or syndicators. In addition, if interim income is approved as a funding source, DSHA requires that normal operational expenses be paid first so as not to unintentionally cause a deficit, particularly if interim income is used for relocation purposes.

Threshold and Other DSHA Requirements

Subsequent Phases of a Development

- The contiguous rule as written appears to link phases strictly on a marketability basis. We believe that this rule ignores the fact that each phase is independently vetted with an individual allocation, as well as a separate ownership structure. We would propose the following clarifications:
    - Substantially complete should be defined as 50% of the units are within 30 days of CO by the date of application.
    - Stable operations-we propose the term stable operations be removed altogether.
    - Conversion-we propose the term conversion be defined as conversion of the property from construction loan to permanent financing.
    - Re-insertion of the waiver clause-we proposed adding-"DSHA reserves the right to establish specific criteria that will reflect the unique characteristics of the multiple phase project that is under consideration.

- With respect to demonstrating that the rent up risk is negligible at best, we would assume that the following would be sufficient: Temporarily relocated qualified residents-we propose that a list of current residents who have been income qualified through an interview process would suffice to prove rent up capacity. Providing the list of residents, date of appointment, and sample questionnaire that was used to determine income eligibility would be deemed sufficient. The residents who remain on the property were also deemed to be qualified by an independent URA consultant. We would also propose that an interest list in excess of three times the number of available units would be sufficient to prove the market.

- The wording "Applications may not be submitted until original development is substantially complete and can demonstrate that at least 75% of the original project is rented…and has stable operations at application and 90% occupied by conversion" is not sufficiently clear and is open to interpretation. DSHA should clarify if the word rented means occupied by eligible tenant and provide definitions for original development, stable operations, and conversion. Also, with use of the word "and", this section can be interpreted that all four criteria need to be met. Is this the intention?

- Regarding the statement "Once a development has received an allocation of credits, additional application(s) for credits for a subsequent phased development on the same or contiguous site(s) may not be submitted until such time as the original development is substantially complete and can demonstrate that at least 75% of the original project is rented to qualified residents." Why reducing to 75%? We prefer that the percentage remain at 90% rented to qualified residents and not change to 75% for subsequent phased development on the same or contiguous site(s). Phased projects should need to show near to complete operating feasibility before a second phase's application can be entertained.

- We oppose the changes relating to the subsequent phases and 90% rules. It is clear that this policy has one direct private party beneficiary and its associated owners and consultants. These deal specific policy changes do not address affordable housing issues for the whole state. The existing policy has served the Delaware development community and promoted a diverse mix of funding for projects across the state for over ten years. The possibility that one development could come in for 9% tax credit funding year after year or with two contiguous sites in one allocation round through 4% and 9% credits is an over-concentration of scarce dollars and measures should be taken to discourage it. Policy that promotes contiguous sites in this way incentivizes the developer to "game" the system to only develop projects to utilize the maximum amount of HDF funding per unit and generate the maximum amount of developer fee. This is an inefficient use of the State's resources and absorbs resources unnecessarily that could be funding new and preserving units across the state.

- Some mechanism should be in place to limit the over-concentration of resources to contiguous site in one round. In the event that a contiguous development gets an award of 9% tax credits, their 4% application should be the last project to be funded without regard to scoring, when placed against other 4% deals.

- The 90% rule has been a long standing rule that has been understood for some time. The reduction of this rule clearly benefits a particular project with a particular developer. There was enough confusion at the meeting with the development community to put this aside this round until greater clarification is brought forward. We requests the 90% rule not be revised from the 2015 QAP.

- The 90% rule needs further clarification, change stable to breakeven point.

DSHA Response: DSHA will continue with the current policy; however, DSHA has clarified the definition of substantial completion, 90% rent-up, and stable operations.

<u>Development Team</u>

- Development Team: Regarding this sentence, “Have requested a qualified contract for a DSHA tax credit property.” We suggest adding the phrase Section 42 before qualified contract to clarify this sentence.

- Under the Development Team section, please remove section h related to the qualified contract. Qualified contract is an allowable process set up under the low income housing tax credit program. Not allowing participation of an applicant for exploring all options for a project is unjustifiable. Furthermore, an applicant may have been forced by other partners to enter into the QC in the past.

DSHA Response: DSHA is pleased to report that the State has not had a Section 42 qualified contract request to-date. If a qualified contract comes to realization and the State has not been able to find a buyer and follow all other Section 42 requirements, then the affordable property can be sold and converted to market rate housing which will result in a decrease in the number of units available to low income households. DSHA executes the extended use agreement in partnership with all owners indicating that the development will stay affordable for the 30 years and should have dedicated team members that agree with the affordability period for the entire period. Owners currently are allowed

to re-syndicate, transfer the general partnership, or sell the property to another owner who assumes the extended use requirements and agrees to keep the project affordable. However, DSHA has removed section h for the 2016 QAP.

Point Categories

Increase in Compliance Period

- The additional half point for no waiver may lead to undesired effects for DSHA and the quality of the aging affordable housing stock. Without the possibility of a waiver, DSHA may see declining housing conditions for residents when the original owner doesn't have the ability to re-syndicate to a new owner who is willing to invest in, upgrade, and preserve the quality and condition of the older affordable housing units. DSHA should either eliminate the half point for no waiver or allow for a sale or re-syndication to a new owner acceptable to DSHA who accepts a new compliance period and extended use.

- We understand that 30 years (No waiver) means that the owner commits to a 30 year use restriction and will and/or cannot request the ability to sell or re-syndicate the project for the 30 year period. We suggests that the points to be the same as in the 2015 QAP for this category, with 30 years restored to 6 points and 30 years (no waiver) removed from this category.
  We are not sure that it is prudent to tie an owner/developer's hands regarding what a project may need or not need later on in the life of the project in term of rehabilitation and all projects should have the option to re-syndicate should a project need substantial repairs. One never knows what may happen 20- 30 years later. We would rather an owner/applicant be penalized in terms of future LIHTC applications should they start to request waivers to opt-out or re-syndicate older projects after 15 years that don't have a basis beyond pure profit motivation.

- We oppose the 1/2 point for committing to the most restrictive compliance period as it will limit preservation opportunities.

- We strongly encourage removal of the increase in the compliance period with no waiver category. This puts families and affordable housing at future risk.

DSHA Response: DSHA has agreed to the change and will continue the current point category as written in the 2015 QAP.

Donated Land and Leveraging

- The QAP should clarify that the concept of Donated Land can apply to both new construction and acquisition/rehab projects. The QAP should also clarify how the value of Donated Land is to be determined. Is it determined by the required land only appraisal, or is it subject to some other valuation as determined by DSHA? DSHA should consider the unfair effect of double counting if an applicant's project with donated land can obtain points for Per Unit Cost Reduction as well as Leveraging of non-DSHA sources. It would be more fair if the applicant could obtain points for one category, but not both.

DSHA Response: DSHA will make the recommended change and clarify that donated land can apply to new construction and acquisition/rehab projects. The current policy includes the Summary Land Appraisal which will determine the value of the land for ranking purposes. We will continue to allow donated land to be counted in an effort to reduce the total development costs, both in the cost containment category and leveraging.

__Contingency__

- We are commenting as a tax credit equity investor, and to express our concern, as a partner and member of the development team, regarding the proposed changes related to the "sliding scale" contingency scoring category found on page 38 of the draft allocation plan. A 10% contingency for preservation and a 5% contingency for new construction is industry standard and is also required for FHA multifamily insurance programs. In regards to preservation, we see this amount as critical due to the complicated logistics in unravelling legacy design features. In both preservation and new construction, a reasonably sized contingency allows for the sponsor to maintain the integrity of the original scope of work even if issues are uncovered. It is a key source of liquidity if a deal runs into problems.

- The DSHA QAP allows for relatively small developer fees when compared to many other states. We view the developer fee as additional security for our investments. This proposed change would shift what is normally a second line of security for unanticipated costs and make it the primary way to fund change orders. Smaller fees increase risk and, depending on the situation, may reduce developer incentive. Timing of the payment of developer fee is another issue that may result in equity providers funding unanticipated costs because if the issue occurs before 50% completion, the developer may not have received any developer fee to cover the overrun. The investor pool in the industry is shallower than it appears and fairly homogenous. It is made up almost entirely of banks, many of which will not allow contingency lower than the standard 10% and 5%. This change risks reducing that investor pool further. It also risks reducing the ability to fund the renovation of older, subsidized HUD properties for families and seniors because it is unlikely that HUD or FHA would make an exception to their underwriting standards for contingency for a single state.

- The investors we work with, and our own underwriting guidelines, would not allow this type of reduction in contingency. The contingency is a critical line item in any development budget and should not be a point category. Cost overruns are a normal part of the risk of developing any type of real estate – you don't plan for them to happen, but sometimes they do, and there should be a built-in "back up plan" with a contingency line item. Industry standard is 5% hard cost contingency for new construction developments, and 10% for rehabs.

- The developer fee is a source of income for development companies – this is how they pay for their operations, staff, and cost of developing new communities. Most deals already have some level of deferred developer fee, which we prefer to see paid at the earliest possible time. Developers already put their entire fee at risk when they take on a new project – that's the risk they (and we) understand. However, we do not believe it should be utilized in place of a budget-based contingency in order to score points.

- We do not think that it makes sense to incent developers applying for 9% credits to cut the contingency to 3% for new construction and 7% for rehab. The tried and true formula of 5% for new construction and 10 to even 15%, for a complex rehabilitation project (change of use for example) is warranted, given the amount of time it takes to put together these projects and the uncertainties inherent in (particularly) acquisition/rehab of an older property.
  We are concerned about this new policy, which would favor for-profit developers, and be particularly risky with rehabilitation projects. We would prefer that the contingency percentage be stated, and propose 5% for new construction and 10% for rehabilitation in the underwriting guidelines.

- This new point category unfairly favors non-profits who can more easily utilize Developer Fees as an additional contingency and creates a significant disadvantage to the private for-profit sector. In an effort to be competitive, this category creates unnecessary additional risk to developers. There are already existing safeguards in place to limit the use of contingency and as such, any savings on the contingency already go to reduce DSHA's debt and therefore, are not a waste of this resource. This may also lead to developers cutting corners to save contingency dollars while not adequately addressing construction conditions that would warrant use of contingency.

- We understand DSHA wanting to find ways to award the reduction of development costs but <u>strongly</u> feel this method is not in the best interest of well-built affordable housing. This is not good policy-wise and definitely favors the for-profit developer with an in-house construction company who can estimate a lower contingency and has the ability to obtain compensation from more than just the developer's fee. Contingency reduction is also largely out of the control of a non-profit developer who seeks bids for the construction price. This category should be eliminated and we would prefer that the maximum percentage for contingency be listed in the Underwriting Guidelines such as 5% for new construction and 10% for rehabilitation or perhaps a slightly lower acceptable percentage for each.

- 0-5 for reducing Total Development Costs (TDC) per unit costs less than DSHA's cost containment guidelines is a clear statement, but really has any developer gotten points for such cost reduction? Also, since Contingency Reduction appears as a separate bold heading, is not listed as a sub-heading to per unit cost reduction, and is not intended to reduce the per cost below the DSHA's cost containment guidelines, the two sections should be fixed in some manner if stating that 0-10 points is for Per Unit Cost Reduction. Should this point category remain, please reduce the number of points assigned to it and indicate how a mixed rehabilitation and new construction project would be treated.

- The construction contingency scoring criteria is bad business and should be removed entirely. There are enough limits on developer fee already and DSHA does a great job protecting against abuse. This further limitation on developer fee potential creates a more risky deal and forces an atypical business deal with the syndicators.

- We would ask the cost limits for cost containment scoring be adjusted to a square foot measure and have a separate benchmark for Passive House projects.

- The construction contingency decrease just seems like bad policy and conflicts with overall goals.

- We entreat DSHA to reconsider the inclusion of the contingency reduction section. At a minimum, DSHA should significantly reduce the points associated with this section and alter the categories. The QAP already incentivizes cost containment.

- I support the contingency remaining as is, no incentives for reduction.

DSHA Response: DSHA has made the recommended change and has revised the point category by removing the additional 5 points for Contingency Reduction. However, DSHA has changed the underwriting category for Contingency to allow lower contingency rates at application, subject to written confirmation of approval from the lenders and syndicators. Approval of a lower contingency rate is also contingent upon receipt of all bids.

__Energy Conservation Measures__

- I would change the wording in the Passive House section to "Passive House Certification (nationally or internationally) for energy efficiency. www.passivehouse.com or http://www.phius.org/phius-certification-for-buildings-and-products for 5 points. www.passivehouse.com is the International Passive House Institute. Mentioning "Net Zero Energy" could be confusing if you don't further articulate what that means so I would just leave it out. Someone could technically get to "Net Zero" and not have a great envelope by filling a field with photovoltaic cells.

- I think that you should require that a "Certified Passive House Consultant or Designer", rather than the architect, certify that the proposed project meets the requirements of a Passive House building. This will make sure that the developer doesn't just "check the box" without at least doing the work to understand what it means to get to Passive House.

- It's great to see Delaware making some real progress in sustainability. However, we are unclear of the intent of the first check-off item under "Energy Conservation System Program." It states, "The development meets/will meet Passive House Certification (nationally or internationally) for energy efficiency." Will project simply be required to meet the standards and targets of Passive House (PH), or does it mean that actual PH certification must be obtained?

- We recommend the following modification under the next paragraph, under the first check-off (as above): "To Qualify for these points, the application must include a letter from a Certified Passive House Consultant to the Agency stating that the project, as designed, meets the Passive House design criteria. Prior to commencement of construction, the Certified Passive House Consultant shall submit an approved Pre-Certification from a national or international Passive House organization to DSHA. At construction completion, all required third party test results and verifications, including blower door tests and commissioning reports must be submitted to DSHA. All third party consultants must be Passive House certified."

- We recommend adding a note, as follows: Note: Buildings listed on the National Register of Historic Places are exempt from provision(s) of the Passive House or Energy Star 3.0 programs as described above, to the extent that implementing energy savings techniques/materials would compromise architecturally significant detail(s) or element(s) of the protected structure. All other portions of the project must comply with an Energy Conservation System Program, if elected."

- We are concerned that renovation projects, particularly historic renovations bound to adhere to historic renovation standards will be penalized. We believe the playing field can be leveled in this case by either making historic units exempt from this category, or making full points available to projects that meet the PH or Energy 3.0 standards for the majority of their units. Why are the two different types of architects listed for certification of inclusion of the energy conservation systems? Will/what kind of third party certification might be required to verify the energy systems used?

- Requiring Passive House pre-certification at the application stage to garner points and Passive House certification after construction completion will likely be difficult and cumbersome for the developer to obtain. In Pennsylvania the PHFA opted to require meeting PH standards and requirements, but not actual certification, we support this approach.

- I write to advocate that third-party certification to the ICC 700 National Green Building Standard (NGBS) at the Gold level for Energy Efficiency using the Prescriptive Path and NGBS Green certification at any level using the Performance Path along with the HERS rating of 65 or less be recognized as alternatives to the energy conservation systems recognized in the draft QAP. NGBS is currently recognized in 20 state QAPs and an increasing number of state housing finance agencies have been adding NGBS Green certification to their QAPs.

- I write to advocate that third-party certification to the ICC 700 National Green Building Standard (NGBS) at the Gold level for Energy Efficiency using the Prescriptive Path and NGBS Green certification at any level using the Performance Path along with the HERS rating of 65 or less be recognized as alternatives to the energy conservation systems recognized in the draft QAP. HBADE requests that the NGBS be recognized alongside Passive Housing and Energy Star as an acceptable energy conservation system in Delaware's QAP.

- We want DSHA to recognize that the proposed points for Passive House and Energy Star 3.0 can really only be awarded to new construction projects as the requirements and certifications are not feasible for most or all acquisition/rehab projects. Given the available research on the subject, it should be understood that actual certification for Passive House may be too onerous or impossible to achieve and should not be made to delay or prevent lease up occupancy of units that are otherwise ready to occupy. DSHA should consider either eliminating this point category or accepting a certification from the design architect that construction plans and specifications meet Passive House standards as an appropriate test for the points. Further, in order to be fair to each of the development pools, DSHA should also consider points for other achievable energy conservation measures for acquisition/rehab projects that are not cost prohibitive.

- While DSHA picked two types of Energy Conservation measures, why weren't other green building criteria recognized in the point structure? What about considering other green criteria such as LEED, NAHB's Green Building, or Enterprises Green Communities, which is geared for affordable multi-family housing? Given this point category as it is written, building to any of the other green building standards would not garner any points.

- Also, how will DSHA treat a project with rehabilitation and new construction units if only a portion of the units are built to the Passive House or Energy Star 3.0 standards? For Historic buildings, WE suggests that buildings listed on the National Register of Historic Places be exempt from provision(s) of the Passive House or Energy Star 3.0 programs and that any other portion of the project must comply with an Energy Conservation System Program, if selected for such points. WE agrees with Kevin Wilson, Architectural Alliance's comments on suggested modifications.

- Passive House should be aligned with other options, such as Enterprise Green or NGBS, as an enhanced point category ahead of Energy Star.

- I would like to see a cost benefit analysis of Passive House projects and how long it takes for these projects to pay back the additional costs incurred to build. We've used Energy Star 3.0 in Maryland and have had great success.

- We applaud DSHA's commitment to energy conservation measures. However, please consider additional proven conservation measures/options in the point category.

DSHA Response: DSHA has removed the Passive House conservation measure from the point category for 2016 and reduced the points for Energy Star 3.0 Plus to two points. DSHA also has made several of the recommended language clarifications. DSHA recognizes and will offer other sustainable and green certification programs, including Passive House, in 2017 after DSHA reviews the many sustainable and green certification programs offered throughout the country. DSHA will research these additional methods to make sure that all projects can qualify and/or reach the majority of the requirements for the certifications. In 2017, we will consider the more stringent certification programs receiving the higher points.

The Department of Natural Resources and Environmental Control's Division of Energy and Climate and the Delaware Sustainable Energy Utility offices will be working with DSHA on potential training and funding opportunities for Energy Star 3.0 and other energy initiatives of the state.

Access to Transit

- This section is a little unclear and repetitive - can we assume that if there is a bus stop within immediate walking distance, and we improve/provide amenities to the nearby stop(s) that we will get 3 points? Will painting stripes at the crosswalk count as an amenity?

- My experience in other states is consistent with your examples below but none of those remotely resemble the language in your QAP "…including amenities and making improvements to accommodate transit facilities". They consist entirely of providing an incentive for developments being located near transit. That makes sense.

- None of the approaches by other states suggest requiring a piecemeal approach based on individual affordable housing projects. In contrast these recommendations make sense since they rely on a broader policy approach and public investment to address issues around access to transit for moderate income households. Maybe DSHA could consider pursuing these with your sister agencies?

- If a property is considered to be "Existing Transit" then it should be the ideal scenario and should be awarded maximum category points. Otherwise, sponsors will be incentivized to choose existing projects or locations for new projects where there is no Existing Transit but can be made Transit Ready with an MOA. It stands to reason that Transit Ready projects with an MOA will incur additional costs and use more scarce resources as compared to Existing Transit projects. The full 3 points should be awarded to Existing Transit developments as they are the most cost effective option for the tax credit program and ensure the benefit of access to transit for the residents.

- Section is not very clear-needs clarification by listing (0-3 maximum points) after to the heading of "Access to Transit." and some other editing might help as it seems to repeat somewhat. We like that the QAP requires a Draft Memorandum with DTC. We would prefer simplifying this section so that it only provides 1 point if the project has access to transit.

- The DTC involvement in the transit section is onerous and should be eliminated. This policy in general is a huge disadvantage to rural areas of the State. If it must stay, a policy that levels the playing field for rural projects against urban projects should be established.

- Please review options to include provisions for properties with existing access to transportation. It is important to allow the Department of Transportation to fuel access to transit for reasons already stated by the development community.

DSHA Response: Changes were made this year to clarify and simplify a category incorporated several years ago as part of the State Strategies for Policy and Spending. Originally, there was no coordination with respect to the requirements of DTC through the executed memorandum of agreement (MOA) with the applicant. As a result, it did not effectively provide reliable transit for residents of tax credit sites and it was difficult to determine what warrants 'access to transit'. This new coordinated approach with DTC will be very effective in ensuring both. In addition, DSHA will only require a draft MOA, providing time for review by DSHA and DTC should credit(s) be awarded. To encourage more opportunities in Sussex County for points in the Access to Transit category, DSHA

worked with DTC to add additional lines in Sussex County – flex lines – that were not included in the past, but are now included. Policy facilitating the connectivity between housing and transit has become more common (evidenced by 32 states that use the QAP to encourage access to transit) and will continue to grow. This is due not only to the tremendous need for reliable transportation by residents housed in tax credit units, but also due to Fair Housing implications. HUD's policy is that Americans of all backgrounds and incomes deserve communities where they have choices: choices between housing units, between career ladders, and between transportation options. This policy has been hard-wired in HUD's final rule, Affirmatively Furthering Fair Housing (AFFH), where housing finance agencies should look at, among other items, the disconnect between protected classes and access to transit. DSHA is also required to track progress facilitating the connection between protected classes and transit access. The QAP's Access to Transit point category is an excellent incentive to meet documented resident need and ensure AFFH compliance with HUD for the tax credit program in our State.

<u>Community Revitalization Plan</u>

- Points provided for a Community Revitalization Plan continue to benefit urban areas and places an unfair disadvantage for rural areas. Very few rural towns have a Community Revitalization Plan or Redevelopment Plan. This category should be eliminated.

- Why should this plan be within the last five years?

DSHA Response: Section 42 requires each QAP to include community revitalization plans as part of the priorities for each state. DSHA has had the Community Revitalization Plan as a point category for many years. Municipalities, including the counties, have a vigorous citizen participation requirement for all comprehensive plans. As part of a sponsor's future plans for development, we encourage involvement in the planning process of a future site or acquisition of a site well in advance with the municipalities. In addition, for this category, DSHA will accept other plans including FHLB Blueprint community plans and other neighborhood plans. Typically community and/or neighborhood plans are updated every 5 years in order to reflect changes in neighborhood dynamics to stay current with the needs of the community. If plans are longer than 5 years, they tend to be obsolete to community needs.

<u>Areas of Opportunity</u>

- We like the addition of the Interactive maps -- very helpful!

- The 2016 draft QAP redefines Areas of Opportunity in significant ways. By focusing on the *Assessment's* census tract analysis it appears that these changes would reduce the opportunity to create and/or redevelop affordable housing in older urban areas identified as Stable Communities on the 2016 Interactive Maps where that redevelopment is a significant component to neighborhood stabilization. We request that the definition of Areas of Opportunity in the 2016 QAP be expanded to include older urban neighborhoods that are where this investment will continue to help stabilize these neighborhoods, particularly where such proposed developments are part of an approved Community Revitalization Plan.
  In addition to its census tract analysis, the *Assessment* identified key issues in those "stabilized" areas and noted that supporting neighborhood identity and rehabilitating existing housing stock should be key priorities in these areas. The *Assessment* also pointed out that there are older

sites in need of extensive rehabilitation or potential demolition and redevelopment and that redevelopment of sites like these could be a critical component of neighborhood revitalization. Therefore, we request that the definition of Areas of Opportunity be expanded to include areas identified on the Map as Stable Communities but where LIHTC investment would be a key component in stabilizing and revitalizing these neighborhoods, thus addressing other key issues identified in the *Assessment*. Alternatively, we request that a “sliding scale” be included in this section, where 5 points would be available to developments not located in Areas of Opportunity as that is defined in the draft QAP but where this investment would address other key issues identified in the Assessment.

DSHA Response: Thank you for the positive comments. For the LIHTC program, DSHA’s goal is to try to balance housing investments and encourage the creation of affordable housing opportunities within the State of Delaware in areas that contain little or no affordable housing, but which may offer economic opportunity, proximity to the workplace, additional school choices, or supportive infrastructure for DSHA programs. Because these areas tend to be highly desirable, it is very difficult to develop affordable housing because of neighborhood opposition, land values, and potentially more demanding zoning codes. As a result, DSHA believes it is important to provide a strong incentive for a developer to pursue a proposal in these areas. DSHA has clarified that points will be awarded to new creation or preservation developments located in “areas of opportunity” areas, but projects in “stable” areas will not receive points in this category. Projects located in “stable” areas of the state will still be well suited for receiving points in other categories. DSHA does not plan to make changes on the maps or in the points for this category.

<u>**Local Government Contribution**</u>

- This category continues to give urban areas a leg up over rural areas due to that fact that rural towns having very limited resources and no "extra" funds to contribute to a project. Also, non-DSHA HOME funds are only available in New Castle County and Wilmington and not in Kent or Sussex Counties.

DSHA Response: DSHA recognizes that there are no non-DSHA county or municipal HOME funds available in Kent and Sussex Counties; however, the counties and municipal governments have waived permit and other fees and reduced taxes on many developments. DSHA will continue to look for ways to balance all our resources statewide.

<u>**Leveraging**</u>

- Excluding historic tax credit equity from the calculation of other sources of leveraging-we would like to see historic tax credit equity be included in the calculation of leveraging. Bringing in the additional equity from historic tax credits does represent another non-DSHA funding source and does in fact reduce the amount of LIHTCs being sought from DSHA. This could enable the LIHTC allocation to go further. We ask that DSHA reconsider allowing Historic Tax credit equity as a permanent source of funding.

DSHA Response: The leverage category's main purpose is to provide incentive for sponsors to find other resources so that there is less DSHA permanent debt which will allow DSHA to stretch this valuable state resource. Historic Credits and Low Income Housing Credits that are sold are considered equity and not hard permanent debt. However, historic equity, as well as tax credit equity will reduce the necessity for permanent debt and in principle should assist with additional points in this category.

Location

- Thank you for supporting rural areas with the change in language associated with the access to services criteria. The revised policy better reflects how people live and travel in rural areas.

- This category is meaningless; if a site has infrastructure and utilities that should be sufficient. DSHA should not be in the local land use planning business.

DSHA Response: Location is part of Delaware's State Strategies on Policies and Spending. The purpose of this category is for developments that can demonstrate overall quality of location. Locations that have immediate access to existing infrastructure (roads, water, sewer, and other infrastructure and have 75 percent of its perimeter bordering existing developed land are considered more ideal for development than other locations.

Protecting Environmental Resources

- If a site has zoning and utilities and can be developed why does it matter if a portion is wet, sloped or in the flood plain? Not to mention the distances provided are arbitrary. Since 2004, the State of Delaware has encouraged redevelopment of brownfields. Is DSHA operating under a different state policy?

DSHA Response: DSHA does encourage re-development of brownfields and will allow for points in this category, if the land or property has had the environmental issues remediated. The QAP does allow for properties to be located within all of these categories, but priority within the point system is given to properties that do not have any environmental issues.

Community Compatibility

- This category is entirely subjective and needs to be eliminated. Design and connectivity are dictated by local government and are developed through zoning and site plan approval. In addition the QAP uses terribly vague terminology – "enhancement of visual character, foster creativity, positive contribution, color enhances exterior quality and interest" and my personal favorite "should not look strange". This category seems to be striving for some happy Disneyesque illusion for affordable housing with no consideration for community preferences, costs or the development process.

DSHA Response: Community Compatibility is part of Delaware's State Strategies on Policies and Spending. The purpose of this category is for developments to demonstrate that affordable housing is part of well-functioning, sustainable communities and connected to surrounding communities. The presence of diverse housing options across the income spectrum near transit links, neighborhood amenities, and economic opportunities is a hallmark of vibrant, sustainable communities.

Underwriting

Operating Expenses

- We oppose the specification of an operating expense minimum for subsidized projects that differ from un-subsidized projects. While it is generally the case that there is a difference, the policy overlooks that fact that partially subsidized projects can and do operate more lean in reality than their fully subsidized counterparts. This is ultimately the owners' risk and if we cannot adequately justify their operating expenses during the underwriting process with lenders and investors the deal will not move forward.

DSHA Response: DSHA needs to assess the reasonableness of all development and operating costs in evaluating the financial feasibility of tax credit properties. Comparing a property's projected operating costs against actual expenses of comparable properties is an effective way for DSHA to judge the adequacy of the property's operating budget.

DSHA has established and maintains a database (MITAS) of actual operating costs. A database of actual operating costs of tax credit developments is a useful way to access and analyze comparative property operating cost data. The minimum operating costs threshold is based on actual tax credit projects in Delaware (non-subsidized, subsidized, and those that are a mix of both) that report monthly into DSHA's MITAS database as well as the audited operating costs. DSHA has found that subsidized projects tend to have larger operating costs than non-subsidized projects. DSHA reviewed the most recent audited operating cost data and has updated the threshold criteria based on actual data from the current portfolio under DSHA.

Developer Fee

- We believe that it is inequitable to reduce the developer fee of a subsequent phase. The developer fee is paid for the work and risk undertaken by the developer. The developer is guaranteeing performance and long term viability of a project for a fee, which is far under what neighboring states are allowing. It would appear that the developer is being penalized while still carrying the same risks. Issues can still arise in the development, construction, and operations phases of any development. A developer's ability to identify and address those potential risks as well as guarantee the construction and operational risks are compensated through the developer fee, and it seems unreasonable to reduce that fee in cases where the developer has been able to do a good job at minimizing those risks.

- More details should be provided on the limitation of developer fee on subsequent phases. This limitation should only apply when LIHTC funding has been requested within a specific time frame. As it is written now a second phase of a project from years before will be subject to an artificial cap on developer fee.

- Why should contiguous phases be considered less risky? The requirements are not less; therefore the fee should not be less.

DSHA Response: DSHA has agreed to the recommended change and has removed the developer fee language for contiguous parcels.

- Calculation of the developer's fee to exclude site and environmental remediation costs will penalize projects that qualify for and have taken the initiative to apply for DNREC Brownfield funding. This funding only applies when a new entity is purchasing the property, and can only be applied once the new entity takes title. So in this case it is not possible to perform the remediation prior to purchasing the site. We do not feel it is fair or productive to penalize organizations that have proactively sought Brownfield funding for their projects

- Why does the calculation of a developer's fee exclude site environmental remediation costs? All of the other excluded costs are not typically included in the Total Development Costs. Excluding site environmental remediation costs will penalize projects that qualify for and have taken the initiative to apply for DNREC Brownfield funding. The Developer's oversight of the site environmental remediation must still occur. Also, the DNREC funding only applies when a new entity is purchasing the property, and can only be applied once the new entity takes title. So it is not possible to perform the remediation prior to purchasing the site. Cleaning up a site is imperative and we feel it is not fair to include this as an exemption from the allowable development costs for the calculation of the developer's fee. Also, we feel the wording is vague in the following sentence and should specify a not to exceed fee number "Applications from Contiguous properties w/ (9% and 4% are subject to a reduced fee ..."

DSHA Response: Site Remediation is a cost to the project and will continue to be part of the Total Development Costs; however, it is deducted from eligible basis for credit determination as the cost is related to preparing the land for construction. Funds for site environmental remediation and clean-up costs are typically provided by DNREC to the current property owner (not to the new ownership entity) who in turn hires a DNREC approved environmental consultant to oversee the work. DSHA requires site remediation work to be completed prior to construction closing and as such, it is the responsibility of the current property owner rather than the new developer entity. Developers should be aware of clean-up costs and negotiate acquisition costs accordingly.

- The IOI developer fee limit on the basis of owning vacant land should not exist. The policy for acquisition value for land is an adequate mechanism to prevent gaming and abuse. There is no less risk in the development on the basis of simply owning land to develop.

- There was an addition of land acquisition as creating an Identity of Interest and therefore also subject to lower developers fees. If the land is vacant, the developer is taking a risk on the potential that the property has. They may or may not be awarded credits. They can be seen as having a greater risk if they acquire early compared to later, so therefore the fee should also remain the same. Furthermore, we are often approached by developers (previous developers) that want to leave the program. It is our mission to acquire and preserve existing affordable housing complexes. We can achieve those results by acquiring the property immediately and providing quality management and ownership that is consistent with the mission of the project. To wait for the timing to be correct with DSHA to maximize a development fee may not be the wisest course of action for the property for several reasons. Do not penalize a group from doing the right thing in this case either. If the Identity of Interest for an existing property is less than 5 years they shouldn't be subject to this reduction. If the property was within their portfolio and they were the original developer than we can understand the point of a reduction.

DSHA Response: DSHA has always taken out the land as part of the developer fee calculation; this is not new policy. The developer fee calculation does not affect the acquisition price of the related party transaction and will not mitigate any risk for any owner. DSHA is required by the IRS to assess the return to the owner and/or developer fees so they are not excessive. It is more than likely the full developer fee will be earned on most developments, including related party transactions.

<u>Bidding Protocols</u>

- There is a mention in the QAP that a GC may do work on the project themselves but must get bids to satisfy DSHA's requirement for low bidder on that task. The next bullet mentions that no entity from the Development Team (which can include the GC) may do the work on the project through an affiliated sub-contractor. This is incongruent with the above bullet that the GC can do his own work. They are now part of the Development Team. The GC may even be affiliated with the Developer. The work, which may be handled by the affiliated subcontractor, could now just be done by the GC himself. So either the GC can or can't do any of the work himself. ABC General Contractor own LMNO Electric Company. Now ABC is part of the development team, they may no longer use LMNO Electric Company. This can impact the delivery and efficiency with the GC. The work around, would be that the electric, which would have been subcontracted with LMNO, is now just done through ABC. Seems like a lot to avoid using a subcontractor that can perform a perfectly good job just because they have an affiliation.

DSHA Response: Any General Contractor may have legitimate employees that perform work on a development in a particular line item. For example, a General Contractor may have carpenters as employees that do framing. In order to avoid any appearance of impropriety, DSHA has always required three bids for the work in this situation. The key here is that the General Contractor (not a sub-contractor) has legitimate employees of the General Contractor performing all or part of the work.

Since DSHA does not have guidelines for general requirements or profit and overhead for sub-contractors, there is no way to verify the amounts paid to affiliated entities for the purposes of determining if excessive fees are being paid under subsidy layering or cost cert regulations. It is therefore better for all parties to eliminate any potential for the appearance of excessive fees being paid to related entities.

<u>Overhead and Profit and Change Orders</u>

- The guideline states that "No increase in the percentage of overhead and profit will be allowed (including for Change Orders)." In the case of change orders, does this mean that the percentage cannot exceed 10% or 7% respectively, or that no additional overhead and profit can be obtained by the GC for change orders? If it is the latter, non-development team GC's are not likely to accept this in the contract.

- In the case of change orders, does this mean that the percentage cannot exceed 10% or 7% respectively, or that no additional overhead and profit can be obtained by the GC for change orders? Please clarify.

- Upon hearing comments from the group there seems to be some confusion on the change order. Some read it that change orders could not receive an applicable percentage of GR and OH&P. Some read it to read that they could but it was the GR and OH&P they agreed to at the start. Please clarify. Furthermore, we request that a sliding scale be implemented with any changes to the profit and overhead which takes into account smaller projects.

DSHA Response: DSHA has clarified the policy and provided an example as follows: "After application, no increase in the percentage of general requirements and profit and overhead will be allowed (including for Change Orders). For example, if the general requirements percentage is established at 7%, the percentage may not exceed 7% for the duration of the project including general requirements and profit and overhead added to approved change orders."

<u>**General Requirements**</u>

- The reduction in the percentage from General Requirements from 8% to 6% for acquisition/rehabilitation projects is significant and may create a burden for the GC. Given that GR costs already have to be legitimate and cost certified is an existing safeguard that ensures that any excess or unused GR funding can be used to reduce the DSHA debt.

- The general requirements reduction to 6% should not be considered. However, more importantly, a sliding scale needs to be established for smaller projects to have a higher percentage of general requirements. Maryland has a sound policy for this which permits greater GR for projects under 40 units.

- Would not like to see the reduction in general requirements, but suggest something like a sliding scale, particularly for small projects.

DSHA Response: DSHA has revised the General Requirement underwriting criteria to not exceed 7% for all projects, including new construction and acquisition/rehabilitation projects.