



Office of the City Manager

ACTION CALENDAR

November 14, 2006

To: Honorable Mayor and  
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Stephen Barton, Director of Housing

Subject: Housing Trust Fund Commitment of \$789,546 to Allston House

RECOMMENDATION

Adopt a Resolution to commit \$789,546 from the Housing Trust Fund (HTF) as a permanent loan for Allston House, a 47-unit preservation project for very low and low-income families, accompanied by a commitment to loan City General Funds to the HTF if necessary to make up any HTF shortfall in this amount in January 2008 when the permanent loan is needed.

SUMMARY

The decision by U.S. Department of Housing and Urban Development (HUD) to deny Project-Based assistance to Allston House has resulted in a funding gap of approximately \$789,546 for the project. Unless Affordable Housing Associates (AHA) is able to secure the funds to fill this gap, this could potentially lead to the loss of forty-seven affordable apartments for very low and low-income tenants. For the past year and half since AHA received its commitment of project-based vouchers in February 2005, AHA was able to secure State Multifamily Housing Program funds, federal low-income housing tax credits and tax-exempt multifamily bonds for the project. With all its major sources of funding in place, AHA was able to secure construction and permanent financing from US Bank, including a second permanent loan from US Bank in the amount of \$789,546, which was guaranteed by the Project-Based Section 8 vouchers. The permanent financing must be in place by November 30, 2006 in order for the project to move ahead, but the permanent loan amount of \$789,546 will not be needed until January 2008 when rehabilitation is completed.

There is currently only \$170,008 unreserved in the City's Housing Trust Fund, however we currently project revenue of \$1,600,000 from inclusionary condominium in-lieu fees on projects currently under construction and coming on the market over the next twelve months. This does not count the annual HOME allocation of \$1,200,000 that is already committed by the Federal government to the City for July 2007, and any revenue to the HTF from affordable housing mitigation fees paid for condominium conversion of rental properties over the next year. For this reason, staff is confident that there will be sufficient funds to cover this obligation from the HTF by January 2008. However, in order to make the commitment, City General Funds must be reserved in the amount of \$619,538 until such time as the additional funding is actually paid into

the HTF. The Housing Advisory Commission reviewed and unanimously recommended this proposal at its meeting on November 2, 2006.

#### FISCAL IMPACTS OF RECOMMENDATION

The amount of the loan from the City would be \$789,546. With only \$170,008 in unreserved funds in the HTF, funds from the City's General Fund Reserve (Fund 010) would need to be set aside in the amount of \$619,538 until such time as the additional funding is actually paid into the HTF.

#### CURRENT SITUATION AND ITS EFFECTS

The decision by U.S. Department of Housing and Urban Development (HUD) to deny Project-Based assistance to Allston House has resulted in a funding gap of approximately \$789,546 for the project. Unless Affordable Housing Associates (AHA) is able to secure the funds to fill this gap, this could potentially lead to the loss of forty-seven affordable apartments for very low and low-income tenants. For the past year and half since AHA received its commitment of project-based vouchers in February 2005, AHA was able to secure State Multifamily Housing Program funds, federal low-income housing tax credits and tax-exempt multifamily bonds for the project. With all its major sources of funding in place, AHA was able to secure construction and permanent financing from US Bank, including a second permanent loan from US Bank in the amount of \$789,546, which was guaranteed by the Project-Based Section 8 vouchers.

Without the commitment of the Project-Based Section 8 vouchers as a permanent source of funds, AHA cannot close on its construction financing with US Bank. The deadline to close on the construction loan is November 30, 2006. Any delays in closing the construction loan would put AHA's financing plan at risk, as they would fail to meet the deadlines and requirements set forth in other funding agreements with MHP and their tax credit investor. In addition, if AHA could not move forward with the project, it would hurt their chances to compete for funding for future housing projects. The organization would likely receive negative points by the Tax Credit Allocation Committee, California Debt Limit Allocation Committee and State Multifamily Housing Program for receiving commitments and not using them, and then would be disqualified for many years from doing affordable housing developments in California.

HUD's decision, which is based primarily on issues regarding the Berkeley Housing Authority's evaluation process of the Project-Based Section 8 applications, is not the fault of AHA or the tenants currently living at Allston House. The City has an obligation to meet its commitment to the project and to preserving the forty-seven affordable apartments for very low and low-income tenants.

There is currently only \$170,008 unreserved in the City's Housing Trust Fund, however we currently project revenue of \$1,600,000 from inclusionary condominium in-lieu fees on projects currently under construction and coming on the market over the next twelve months. (See attachment A.) This does not count the annual HOME allocation of \$1, 200,000 that is already committed by the Federal government to the City for July 2007, and any revenue to the HTF from affordable housing mitigation fees paid for condominium conversion of rental properties

over the next year. For this reason, staff is confident that there will be sufficient funds to cover this obligation from the HTF by January 2008. However, in order to make the commitment, City General Funds must be reserved in the amount of \$619,538 until such time as the additional funding is actually paid into the HTF. As one way to make further funds available in the future, staff is considering the option of conducting another Request for Proposals for Project-Based Section 8 in the next 18 months, which would allow Allston House and other eligible projects, to apply for project-based assistance. Allston House would apply under new criteria for existing housing preservation projects. This would require HUD's review of the application process. If approved, the project-based vouchers would provide an alternative source of permanent financing for Allston House.

It is important to note here that while this commitment is being made outside the normal HTF procedures for Project Selection, the HTF Guidelines provide the City the ability to "consider funding requests outside the normal funding cycle if a project with commitments of state and federal funds can show that those commitments are in jeopardy unless the City commits HTF monies in a timely manner". This is the case with Allston House. Without the commitment of permanent financing from the City, Allston House cannot close on its construction financing which would put the project at risk of losing its other major funding commitments from the state MHP program, federal low-income housing tax credits and tax-exempt multifamily bonds.

#### BACKGROUND

In February 2005, AHA received an allocation of 12 Project-Based Vouchers for Allston House from the Berkeley Housing Authority (BHA). In June 2006, the U.S. Department of Housing and Urban Development (HUD) notified the City that since the allocations of the Project-Based Section 8 assistance were made to the projects that received City assistance prior to the BHA allocation, this created an identity of interest that requires HUD review and approval of such allocations. At the October 10, 2006, meeting of the Berkeley Housing Authority, staff informed the Board that the HUD Office of Public Housing had conducted a review of the applications for six projects that received an allocation of Project-Based assistance from the BHA in February 2005. After completing its review, HUD disqualified allocations to three projects – Prince Hall Arms, Hillegass Apartments and Allston House. Staff had engaged in discussions with HUD regarding their decision, after which HUD agreed to reconsider its decision on the allocation of twelve Section 8 vouchers to Allston House due to the special circumstances of the project, which is a preservation project with all its funding in place.

On October 20, 2006, HUD informed the BHA that they were unwilling to approve Allston House for Project-Based Voucher assistance. HUD's decision to deny Project-Based allocation to Allston House was based on three factors. First, HUD believes the BHA's identity of interest with the City of Berkeley gave the Allston House project gave the project an unfair advantage in the competition for Project-Based Vouchers. Specifically, HUD objected that all the necessary information for evaluating this project was not submitted with the application and that the application did not demonstrate site control. Since the City had provided AHA with a HELP Program loan to obtain a five year lease with option to buy the property, and had a copy of the lease as part of the requirements for making the loan to AHA, City staff had not considered it

necessary to ask that this document be resubmitted with the application for Project-Based Section 8. The HELP loan was the basis for HUD to determine that there was an “identity of interest” between the BHA and the City, however HUD insists that the BHA and City processes must be considered entirely separately, and that therefore the application must be denied due to lack of evidence of site control in the application. Similarly, HUD gave the project zero points for not being able to demonstrate how it would meet local housing needs and priorities because its application did not include written documentation on how it would meet this criteria. Using information available from the project’s HELP loan application, staff had made a determination that the project did in fact meet the City’s housing priority needs of preserving affordable housing. In HUD’s view, this illustrated both the “identity of interest” problem and an improper procedure even though the application does not specifically ask for documentation. In BHA’s view, staff made the determination that the project did meet this criteria based on the information available to them and what is stated in the *City of Berkeley Consolidated Plan for Housing and Community Development*.

Second, HUD disagreed with the BHA’s decision to execute two, five-year extensions of the Housing Assistance Payment (HAP) contract prior to the initial ten-year HAP contract on the grounds that this grants an effective 20-year contract term when the statutory limit of a contract is ten years. Staff had informed AHA that the approval of the renewal contract would be conditional upon the project’s executing an initial HAP contract and the availability of funds at the time it came up for renewal. In other words it was not a binding commitment. The terms and conditions of the two, five-year extensions would be provided in a HAP contract renewal agreement and the renewal contracts had not been executed. Other neighboring jurisdictions have approved HAP contract terms of this nature in order to help affordable housing developers raise additional funding for their projects. Nevertheless, staff will ask the BHA board to repeal their decision granting the contract renewals and approval of the two additional 5-year HAP contract terms.

Finally, HUD disagreed with AHA’s decision to do a soft closing on the construction loan in late August after HUD had notified BHA that the Allston House project was not approved. AHA made a decision to go through the soft closing in order to meet deadlines set by their lenders. The soft closing, however, is not an indication that the project has started construction. In fact, it can only be considered a “pre-closing” since the hard closing of the construction loan would require the execution of the Agreement to Enter into a Housing Assistance Payment (AHAP) contract. According to our consulting attorneys, Goldfarb and Lipman, this is standard practice in the industry and is not contrary to any HUD regulations.

Attached for reference are all correspondence between HUD and the Berkeley Housing Authority (from August 2006 to October 2006) that discusses HUD’s evaluation of the Project-Based Section 8 applications and the basis for HUD’s final decision on Allston House.

#### RATIONALE FOR RECOMMENDATION

HUD's decision to revoke the project-based vouchers was based primarily on issues regarding the BHA's evaluation process of the Project-Based Section 8 applications, and is not the fault of

AHA or the tenants currently living at Allston House. Allston House has been home to some of the low-income families and individuals for over thirty years. AHA's goal is to acquire, rehabilitate and preserve the apartments for very low and low-income tenants. The City had initially made a commitment to this preservation project in October 2004 when it provided AHA the funds to enter into a lease agreement to purchase the apartment building. In February 2005, the BHA committed project-based vouchers to Allston House, which helped AHA secure the additional funds it needed to complete its financing plan. Now the financing plan for Allston House is at risk unless AHA can fill the gap that resulted from the loss of Project-Based Section 8 vouchers.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff also considered having AHA resubmit an application for project-based vouchers during a new allocation process. However, this would involve amending the Administrative Plan and implementing a new application process, which would take at least 6 to 8 months to complete. This delay would cause AHA to lose its funding commitments from the state MHP funds, federal low-income housing tax credits and bond financing.

#### CONTACT PERSON

Lourdes P. Chang, Community Development Project Coordinator, Housing, (510) 981-5419

#### Attachments:

- 1: Resolution
- 2: Inclusionary Housing Program Projected In-Lieu Fees
- 3: August 7, 2006, Letter from Stephen Schneller, HUD Director - Office of Public Housing RE: Application Rating for Project-Based Vouchers
- 4: August 24, 2006, Letter from Berkeley Housing Authority to HUD Office of Public Housing RE: Response to HUD's Application Rating of Project-Based Vouchers
- 5: September 18, 2006, Letter from Stephen Schneller, HUD Director – Office of Public Housing RE: Application Rating for Project-Based Vouchers (HUD Response #2)
- 6: September 28, 2006, Letter from Berkeley Housing Authority to HUD Office of Public Housing RE: Preservation Project (Allston House) at Risk
- 7: October 10, 2006, Information Calendar Report to Berkeley Housing Authority RE: Status of Housing Authority Operations (pp. 1-3 of report)
- 8: October 20, 2006, Letter from Stephen Schneller, HUD Director – Office of Public Housing RE: Allston House Application Rating for Project-Based Vouchers

RESOLUTION NO. ##,###-N.S.

COMMITTING FUNDS FROM THE HOUSING TRUST FUND (HTF) AS A PERMANENT LOAN FOR ALLSTON HOUSE, A 47-UNIT PRESERVATION PROJECT FOR VERY LOW AND LOW-INCOME FAMILIES, ACCOMPANIED BY A COMMITMENT TO LOAN CITY GENERAL FUNDS TO THE HTF IF NECESSARY TO MAKE UP ANY HTF SHORTFALL IN THIS AMOUNT IN JANUARY 2008 WHEN THE PERMANENT LOAN IS NEEDED.

WHEREAS, on February 15, 2005, the Berkeley Housing Authority approved the allocation of 104 Project-Based Section 8 vouchers, including 12 vouchers for Allston House, at 2121 Seventh Street in Berkeley, CA, Berkeley Housing Authority Board Resolution No. 708; and

WHEREAS, in June 2006, the U.S. Department of Housing and Urban Development (HUD) informed the BHA that HUD would need to review and evaluate the applications for Project-Based Vouchers as set forth in the HUD program guidelines for the Project-Based Certificate Program;

WHEREAS, on August 7, 2006, upon HUD completion of its review of the applications, HUD informed the BHA that three projects, including Allston House, did not meet the threshold requirements and selection criteria for the program, and thus, would not be eligible for any project-based voucher assistance;

WHEREAS, on October 20, 2006, HUD made its final decision to deny approval of project-based assistance to Allston House, after it had agreed to give the project special consideration since it was a preservation project with all its funding commitments in place;

WHEREAS, the loss of Project-Based Section 8 vouchers resulted in a funding gap of approximately \$789,546 for the project and unless another funding source is identified to fill the gap, the loss of project-based assistance as a source of permanent financing would place Affordable Housing Associates (AHA) at risk of losing other funding commitments for Allston House and future affordable housing projects and would lead to the loss of forty-seven apartments for very low and low-income families and individuals; and

WHEREAS, on November 2, 2006, the Housing Advisory Commission recommended approval of staff recommendation to commit a Housing Trust Fund loan in the amount of \$789,546 to Allston House outside the normal funding cycle in order to save the project and forty-seven units of affordable housing.

WHEREAS, the amount of the loan from the City would be \$789,546 and with only \$170,008 unreserved funds in the HTF, City General Funds must be reserved in the amount of \$619,538 until such time as the additional funding is actually paid into the HTF.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City commit a \$789,546 HTF loan to Allston House accompanied with a commitment of City General Funds to the HTF if necessary to make up any HTF shortfall in January 2008 when the permanent loan is needed.

**Attachment 2  
Inclusionary Housing Program  
Projected In Lieu Fees – 2006 and 2007  
Projects Under Construction**

Address	Status & Projected Completion date	Units eligible for in lieu fee	Projected Fee from Project
2628 Telegraph	Const. nearly done Completion by Dec. 2006	3	\$500,000
2700 San Pablo	Under construction early stage, est. completion about Dec. 2007	2	\$300,000
1801 Shattuck	Under construction early stage, est. completion, about Dec. 2007	4	\$800,000

**Projects with Use Permits  
Construction Not Started**

Address	Units eligible for in lieu fee
2041-2067 Center St. (Seagate/Arpeggio)	11
1201 San Pablo	3

Explanation: The in lieu fee captures 62.5% between the allowable inclusionary price and the market sale price. Allowable inclusionary prices range from \$143,000 to \$295,000 depending on the size of the unit and when permits were obtained.



U.S. Department of Housing and Urban Development  
San Francisco Regional Office - Region IX  
600 Harrison Street  
San Francisco, California 94107-1387  
www.hud.gov  
espanol.hud.gov

AUG 07 2006

Mr. Stephen Barton  
Director of Housing Programs  
City of Berkeley Housing Authority  
2180 Milvia Street  
Berkeley, CA 94704

Dear Mr. Barton:

Subject: Application Rating for Project-Based Vouchers

We have completed our reviews of the applications received by the Berkeley Housing Authority's (BHA) in response to a Request for Proposals (RFP) relative to the Project-Based Voucher Program. These reviews were performed by this Office as required by 24 CFR 983.53 and 983.56 in effect under the January 16, 2001, Initial Guidance for the Project-Based Voucher Program. HUD is required to review applications and determine whether it is appropriate to select Housing Authority owned units, units owned by an entity substantially controlled by the Housing Authority or where the Housing Authority has an identity of interest in the project.

The RFP was for New Construction units or units requiring Rehabilitation. This was a competitive process. The results of the first RFP are as follows:

- 1535 University Avenue, a new construction project, has received 77 out of a possible 100 points, based on our review. As this project will serve the elderly, the project-based voucher assistance is not limited to the 25 percent unit limitation but may also have project-based assistance for excepted units. Based on the request in the application, this project is eligible for 40 Project-Based Vouchers. We noted in our review of this application that the owners Management Plan appeared to have been written for compliance with other assisted housing programs. It should be noted that this plan will need to be revised to be compliant with the Project-Based Voucher Program. As a reminder, this project may not proceed to the Agreement to enter an Housing Assistance Payment (AHAP) contract prior to this project meeting all other program requirements, including but not limited to a Site and Neighborhood review performed by HUD, Environmental Review, a Rent Appraisal performed by a State Certified Appraiser, and if applicable, a subsidy layering review performed by our Headquarters. Because of the BHA's identity of interest in this project, HUD must approve the initial rents determined by an Appraisal. Further the BHA must obtain the services of an independent entity to determine rent reasonableness and to inspect the unit for compliance with HQS. HUD must approve the independent entity.

- Ashby Lofts, a new construction project, has received 88 out of a possible 100 points, based on our review. This project will generally provide housing for the families and would be subject to the 25 percent unit limitation, which in this case is 13 units. However, the owner will also designate seven units that will house disabled families only. Therefore, this project is conditionally approved to have project-based voucher assistance for a total of 20 units, seven of which are excepted units available only to qualified disabled families. The project is conditionally approved because the project has five stories with an elevator and will serve families with children. This is considered an elevator high-rise project. As such, project-based voucher assistance may only be attached to this project if HUD determines that there is no practical alternative. The HA must submit information on which HUD can make a determination before this project can proceed. As a reminder, this project may not proceed to the Agreement to enter an Housing Assistance Payment (AHAP) contract prior to this project meeting all other program requirements, including but not limited to a Site and Neighborhood Review performed by HUD, Environmental Review, a Rent Appraisal performed by a State Certified Appraiser, and if applicable, a subsidy layering review performed by our Headquarters will also be necessary. Because of the BHA's identity of interest in this project, HUD must approve the initial rents determined by an Appraisal. Further the BHA must obtain the services of an independent entity to determine rent reasonableness and to inspect the unit for compliance with HQS. HUD must approve the independent entity.

- Oxford Plaza Apartments is a new construction project. While the project meets the threshold requirements, and based on our review received 62 out of a possible 100 points, there are several issues that must be resolved before the project can move forward. First the project is located in a high poverty census tract. Based on the Census Bureau data, 42.27 percent of the families in this census tract have incomes below the poverty line. It is a statutory requirement that projects selected for project-based voucher assistance must deconcentrate poverty and expand housing and economic opportunities. Under the January 16, 2001, initial guidance the poverty rate must be less than 20 percent in the census tract. Second, the funding sources indicate that HOPWA funding will be used for construction on this project. If it is the intention of the Owner to designate any of the PBV units for HOPWA families, it will be necessary for the BHA to seek a waiver of the regulations that preclude selection of a family based on a specific disability. Third, this project is a six-story elevator high-rise that will house families with children. This is considered an elevator high-rise project. As such project-based voucher assistance may only be attached to this project if HUD determines that there is no practical alternative. The HA must submit information on which HUD can make a determination before this project can proceed. Additionally, this project may not proceed to the Agreement to enter an Housing Assistance Payment (AHAP) contract prior to this project meeting all other program requirements, including but not limited to a Site and Neighborhood Review performed by HUD, a Rent Appraisal performed by a State Certified Appraiser, and if applicable, a subsidy layering review performed by our Headquarters will also be necessary. Because of the BHA's identity of interest in this project, HUD must approve the initial rents, determined by Appraisal. Further the BHA must obtain the services of an independent entity to determine rent reasonableness and to inspect the unit for compliance with HQS. HUD must approve the independent entity.

- Allston House Project, a rehabilitation project, did not meet two of the Threshold Requirements. The owner claims that they have a lease option to purchase the property from the current owner. However there is no documentation provided in the application that supports this claim. This is confusing because in the application there is reference to a City of Berkeley Loan to help pay for the purchase of this property that was approved five months before the PBV application was submitted. Additionally, there is no indication in the application that this rehabilitation project conforms to the Lead-based Paint Poisoning Prevention Act.

Although the project did not meet the threshold requirements we continued to score the project. Based on our review the project received 51 out of 100 possible points. This score does not meet the minimum scoring criteria for a Rehabilitation project. Therefore, the project is not eligible for any project-based voucher assistance based on score as well as threshold requirements.

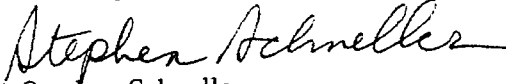
- 2500 Hillegass Project, a rehabilitation project, did not meet three of the Threshold Requirements. There is no indication in the application that the project conforms to the Lead-Based Paint Poisoning Prevention Act. Since the project is 85 years old, this is a significant issue and none of the work to be performed would address lead-based paint issues. The owner also indicated that the project does not meet accessibility requirements and will not meet these requirements after the rehabilitation work is completed. The owner claims that no relocation will be required, however, plumbing is to be replaced in the units. It is not unreasonable to assume that some temporary relocation might be required.

In addition, the project is in a high poverty area. According to the Census Bureau data, 47.58 percent of the residents in this census tract are below the poverty level. It is a statutory requirement that projects selected for project-based voucher assistance must deconcentrate poverty and expand housing and economic opportunities. Although the project did not meet the threshold requirements we continued to score the project. Based on our review the project received 45 out of 100 possible points. This score does not meet the minimum scoring criteria for a Rehabilitation project. Therefore, the project is not eligible for any project-based voucher assistance based on score as well as threshold requirements.

- Prince Hall Arms Apartments, a new construction project, did not meet one of the Threshold Requirements. The owner failed to submit valid evidence of site control. In addition, the project is in a high poverty area. According to the Census Bureau data, 21.38 percent of the residents in this census tract are below the poverty level. It is a statutory requirement that projects selected for project-based voucher assistance must deconcentrate poverty and expand housing and economic opportunities. Under the January 16, 2001, initial guidance the poverty rate must be less than 20 percent in the census tract. Although the project did not meet the threshold requirements we continued to score the project. Based on our review, the project received 53 out of 100 possible points. This score does not meet the minimum scoring criteria for a New Construction project. Therefore the project is not eligible for any project-based voucher assistance based on score as well as threshold requirements.

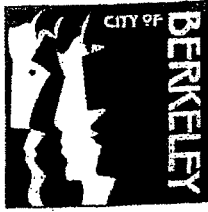
If you have any questions, please contact Susan Platania, Program Analyst, at (415) 489-6445.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Schneller".

Stephen Schneller  
Director  
Office of Public Housing

Enclosure



Housing Department  
Public Housing Division

August 24, 2006

Mr. Stephen Schneller  
Director, Office of Public Housing – Region IX  
U.S. Department of Housing and Urban Development  
600 Harrison Street  
San Francisco, CA 94107-1387

Subject: Application Rating of Project-Based Vouchers

Dear Mr. Schneller:

We have received your letter of August 7, 2006 regarding the above-referenced subject and offer this preliminary response to HUD's comments on the City of Berkeley's evaluation process of Project-Based Section 8 Voucher applications.

First, the letter has caused us great concern as a majority of the projects in question have made substantial progress in the past 18 months (Berkeley Housing Authority approved the allocation of the Project-Based Vouchers in February 2005). In fact, with HUD approval two of the projects – 1535 University Avenue (University Avenue Senior Housing) and Ashby Lofts- have already entered into an Agreement to enter a Housing Assistance Payment (AHAP) contract and are currently under construction. Two other projects – Oxford Plaza and Allston House – are at a critical point in their development since both are scheduled to close on their construction financing within the next few months. Allston House is scheduled to close on its bond financing in September 2006 and Oxford Plaza is scheduled to close on its construction financing in mid-December 2006.

This letter will focus on providing a response to questions regarding these two aforementioned projects, as we will need to come up with an immediate resolution to keep the two projects moving forward. Any major delays would result in monetary penalties incurred by the project's non-local funders, jeopardize the financing commitments secured to date, and stop the progress of the development of these projects. We will respond to questions regarding the other projects in a subsequent letter.

Attached are our comments on the Allston House and Oxford Plaza projects. As you review our response to HUD's concerns, please keep in mind that both projects are at a critical point in their development and need project-based assistance to move forward. Without project-based assistance, Allston House and Oxford Plaza would not be able to close on their construction financing which was committed based on the project's receiving project-based Section 8.

Application Rating of Project-Based Vouchers  
From Stephen Barton, City of Berkeley, 8/24/2006

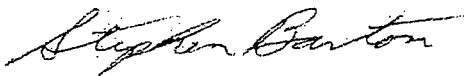
Pulling project-based assistance from the projects now would require additional funding from the City's Housing Trust Fund program, funding which is not available at this time.

We appreciate the opportunity to address the questions and comments related to Allston House and Oxford Plaza and are preparing to draft a response to HUD's questions regarding the other four projects. However, staff feels that most of the comments and concerns could have been addressed if we were given a chance to provide Office of Public Housing with other documentation supporting BHA's decision to award project-based assistance to these projects. We are also concerned that it will take a tremendous amount of time to respond to all HUD's comments in writing.

We would like to meet with the Office of Public Housing to discuss Oxford Plaza and Allston House and to come to a resolution on the issues pertaining to these and the other four projects in question. We would also like to take the opportunity at this meeting to provide additional information on the basis for the Berkeley Housing Authority evaluations of funding applications for the Project-Based Section 8 program.

I will contact your office to schedule a meeting within the next two weeks. In the meantime, please do not hesitate to call me at (510) 981-4501 if you have any questions or need additional information. We are confident that all the six projects meet all of HUD's requirements and hope we can come to an agreement that these projects will move forward in order to provide the affordable housing that is greatly needed in our community.

Sincerely,



Stephen Barton, Ph.D.  
Director of Housing  
City of Berkeley

Cc: ✓ Susan Platania, HUD Office of Public Housing, Region IX  
Andrew Nguyen, HUD Office of Public Housing, Region IX  
Gerard Windt, HUD Office of Public Housing, Region IX  
✓ Roger Asterino, City of Berkeley Housing Department  
~~✓ Lourdes Chang, City of Berkeley Housing Department~~  
✓ Tia Ingram, Berkeley Housing Authority

### **Berkeley Housing Authority's Response to HUD's Comments Regarding Oxford Plaza**

According to HUD's review, this project meets all threshold requirements and the minimum number of points to qualify for project-based assistance (62 of 100 points). However, HUD noted 3 issues must be resolved in order for the project to move forward.

**Issue #1:** The project site is located in a census tract with a poverty level that is greater than 20 percent and does not meet the statutory requirement that projects selected for project-based voucher assistance must deconcentrate poverty and expand housing and economic opportunities. The January 16, 2001, initial guidance, also provides HUD the ability to make exceptions. BHA requests that HUD make an exception based on the following:

While the Census reports a poverty rate for this census tract greater than 20 percent, the site is across the street from the University of California, Berkeley campus and most of the apparent poverty is among student households. According to 2000 U.S. Census data, the poverty rate is 38% of households. However, if the number of student-aged households (householder under 25 years) is pulled from the data, the poverty rate goes down to 13.5%. The number of students living in the area greatly skews the poverty level.

In addition, the project will provide future low-income residents of Oxford Plaza access to significant economic opportunities. The project site, located within the heart of downtown Berkeley next to the University campus, offers easy access to the City's largest employer and a major employment center as well as to one of the Bay Area's best centers for public transportation. It is one block from a BART station and multiple Alameda County Transit bus stops. In conjunction with the Brower Center and the associated retail space the project has the potential to provide 120 jobs that will be available to very low, low-, and moderate-income individuals. The developer will contract with First Source, a City employment program that connects very low and low-income individuals to local employment opportunities. Residents living at the project site will be invited to participate in First Source and will be assessed, pre-screened, and entered into the First Source database to be matched for skills matching with appropriate employers. Residents that require job skill upgrading will be referred to the Work Force Development Partners, which includes City funded job-training programs.

Housing opportunities immediately surrounding the project site, which include market-rate apartment buildings, are very limited for larger families, especially low-income families. Some of the newer apartment buildings have some set-aside units for low-income tenants but a majority of the units are rented to students and higher income households. Other housing types in the surrounding area include owner-occupied single-family homes and aging low-rise market-rate rental apartments. Oxford Plaza will provide 97 new, affordable family apartments to very low and low-income families and individuals, access to employment, transportation and extensive cultural facilities.

**Issue #2:** HOPWA funding will be used in this project. BHA is aware that it must request a waiver of the regulations that preclude selection of a family based on a specific disability and will do so shortly.

Application Rating of Project-Based Vouchers  
From Stephen Barton, City of Berkeley, 8/24/2006

**Issue #3:** HUD considers this project as an elevator high-rise project. BHA is required to find that there is no practical alternative and to obtain HUD concurrence in order for the project to receive project-based voucher assistance. We regret that we missed this requirement and did not request HUD concurrence earlier. BHA does find that there is no practical alternative given the nature of the site and its location in the heart of downtown Berkeley. In July 2001 the Planning Commission recommended a plan for development of the site and the City Council approved that plan. It established specific criteria for development of this site, including a requirement that there be at least 90 units of housing in addition to the David Brower Center, with a preference for more units if possible. In addition, no more than 25% of the units were to be studios and it was to serve a mix of household types including families. It is not possible to create at least 90 units of family housing on this site without five stories of housing. Furthermore, reduction in the height of the project would greatly increase the per unit subsidy required for this project and require a substantial increase in City subsidy, since all available sources of State and Federal subsidy are already being used. As noted above, the City regards it as a high priority to create housing opportunities for families in downtown Berkeley, so use of this space for housing simply for the elderly or disabled would not meet important social goals, as well as contradicting the specific plan for the site. We request that HUD concur that due to the nature of the specific plan covering this site, there is no practical alternative. If further information is needed, we will be happy to provide it.

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Based on the information provided above, staff requests that HUD support BHA's recommendation to grant project-based assistance to the Oxford Plaza development. In the next few weeks, BHA will be submitting the Subsidy Layering Review package for Oxford Plaza.

### City of Berkeley's Response to HUD's Questions Regarding Allston House

**Issue #1:** HUD noted this project failed to meet 2 of the 8 threshold requirements: 1) site control and 2) compliance to Section 302 of the Lead-Based Paint Poisoning Prevention Act.

1) Evidence of Site Control: The developer entered into a five-year lease and purchase option agreement for Allston House in October 2004. The City provided a \$500,000 HELP loan to pay for acquisition costs. A copy of the lease agreement was not included in the application. However, the lease agreement was on file with the Housing Department at the time the application for Project-Based assistance was submitted. BHA staff had this information available to them; and thus, was able to make the determination that the project met the site control requirement. A copy of the lease agreement is enclosed for reference.

2) Compliance with Section 302: HUD notes there is nothing in the application that addresses this requirement. There is no section in the application that specifically asks the applicant to describe how the project will comply with this requirement. The purpose of stating this as a threshold requirement is to reinforce to the applicant that the City will require them to comply with this as part of the housing rehabilitation. Applicants were informed that the projects would need to provide a plan for compliance. For Allston House, the developer completed a lead-based paint survey report on October 10, 2005. The report identifies areas where lead is present at detectable levels and provides lead concentration readings that can be used as a guide for conducting lead safe work practices during construction. A copy of the lead-based paint survey is enclosed for reference.

**Issue #2:** According to HUD, this project did not meet the minimum points to qualify for project-based assistance. HUD gave Allston House 51 points out of 100; a minimum 60 points is required to be considered for the program. HUD and BHA disagreed in the scoring of 2 major categories: 1) Project Criteria (maximum 15 points) and 2) Financing and Leverage (maximum 15 points). HUD awarded the project zero points for the two categories.

1) Project Criteria: Project Criteria is divided into 3 parts: (a) Project proposal advances City priority housing needs as outlined in the City of Berkeley's Annual Action Plan for Housing and Community Development; (b) Project contributes to neighborhood revitalization; and (c) Project provides social services for people with special needs and access to a variety of social services. HUD states there is nothing in the application to base this rating on and gave the project zero points in this category. There is no section in the application that specifically asks the applicant to demonstrate how the project meets the City's housing priorities and neighborhood revitalization goals because staff make this determination based on the project information and what is stated in the *City of Berkeley Consolidated Plan for Housing and Community Development and Action Plan*. There is sufficient information in the applications to make this determination, and it is not appropriate to simply give a 0 score based on the format of the application. We awarded Allston House points based on the fact that the project advances City priority housing needs (i.e., it maintains housing affordability), it rehabilitates blighted property, and the project will offer tenants access to social services. In addition, when applying for other competitive sources of funds, such as State MHP and low-income housing tax credits, a project will need to demonstrate how it meets local housing needs and priorities. Allston House was

Application Rating of Project-Based Vouchers  
From Stephen Barton, City of Berkeley, 8/24/2006

successful at securing both MHP and low-income housing tax credits and the City certified to its compliance with local plans as part of that process.

2) Financing and Leverage: HUD notes the application "claims a variety of funding sources but there are no supporting documents showing any commitments and there is no way to assess project feasibility." HUD awarded the project zero points.

The application asks for a list of potential sources of financing for the project. BHA does not expect any project to have all its financing commitments in place at the time the application for project-based assistance is submitted. In fact, most of the applicants will not have financing commitments for their projects at the time they apply for project-based assistance and will need the commitment of the project-based vouchers to secure additional funding from non-local sources. Typically, projects will need a commitment of funds from the City of Berkeley Housing Trust Fund and BHA in order to qualify for other sources of funds, such as State Multifamily Housing Program (MHP) funds, low-income housing tax credits, and tax-exempt multifamily housing bond financing. Getting commitment of local funds is the first step in a project's fundraising strategy. In reviewing the project-based Section 8 applications, BHA will look to see if the City funds will be leveraged with state and federal sources of funds that would typically be used for similar projects. For Allston House, the City committed a total of \$500,000 for acquisition related costs, which is 5% of the total cost of the project. The commitment of project-based assistance has allowed the project to raise additional funds for construction. Without the allocation of the project-based assistance, the project would need additional funds from the City. Based on the information provided in the application, it is clear that Allston House is well-leveraged (City's contribution is 5% of total sources of funding) and the use of Project-Based Section 8 substantially reduces the need for funding from the City's Housing Trust Fund.

To evaluate the financial feasibility of a project, staff reviews the project's budget and proforma at the time the application for project-based assistance is submitted. Typically, many of the projects receiving City funds must also go through a rigorous evaluation process for other competitive funding programs, such as State MHP and state low-income housing tax credits. Lastly, HUD's Subsidy Layering Review process gives HUD and the local HA staff a final opportunity to review the financial feasibility of a project. It is at this point that all funding commitments must be secured; otherwise, the project would not be allowed to proceed.

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Based on the information provided above, staff requests that HUD support BHA's recommendation to grant project-based assistance to Allston House. Staff requests that the regional office complete its review of the Subsidy Layering Review package for Allston House submitted on June 29, 2006, and forward the package to HUD headquarters for final review.



U.S. Department of Housing and Urban Development  
San Francisco Regional Office - Region IX  
600 Harrison Street  
San Francisco, California 94107-1387  
www.hud.gov  
espanol.hud.gov

SEP 18 2006

Mr. Stephen Barton  
Director of Housing Programs  
City of Berkeley Housing Authority  
2180 Milvia Street  
Berkeley, CA 94704

Dear Mr. Barton:

Subject: Application Rating for Project-Based Vouchers

This is in response to your letter of August 24, 2006, concerning our review of four of the applications received in response to a City of Berkeley Request for Proposals for Project-Based Voucher (PBV) assistance. Our review found significant program problems with the five of the six applications reviewed.

Two of the projects are already under an Agreement to enter a Housing Assistance Payments (AHAP). The University Avenue Senior Housing has no outstanding issues that would prevent it from going to HAP. However the Ashby Lofts project will be a five-story elevator development, which will serve families. The regulations state that a "PHA may not attach or pay PBV assistance to a high-rise elevator project that may be occupied by families with children unless the PHA initially determines that there is no practical alternative, and HUD approves such a finding". Because Ashby Lofts is already under construction it will be necessary for this issue to be resolved before the project goes to HAP.

The regulations further provide for the option of making such a determination for the PHA's PBV program in whole or in part, and not necessarily on a case-by-case basis. HUD may approve on the same basis. Whether the PHA wishes for this determination to be made on a case-by-case basis, or as a whole, the PHA will need to provide to HUD supporting documentation that demonstrates that there is no practical alternative so that HUD can approve this finding.

The Berkeley Housing Authority's (BHA) letter addresses issues raised with respect to the Oxford Plaza development. Arguments are presented to demonstrate that although the census data shows that this project's census tract shows a poverty rate of 42.27 percent, this project will in fact deconcentrate poverty and expand housing and economic opportunity. The determination of whether this project will meet this statutory goal must be made under the waiver process. As such we request that the BHA address this issue as a waiver request to our office so that we can submit it to our headquarters on your behalf. Without this waiver the project is ineligible. Any commitment made to the owner could only be a conditional approval because until this waiver is received the project is ineligible.

The BHA has indicated that they are aware that they need to request a waiver in order to select HOPWA-eligible families for specific units that are funded with HOPWA funding. This waiver should have been requested as soon as the BHA was aware that the project would need this type of a waiver. Any commitment to an owner to provide PBV assistance to units that must adhere to other funding source requirements that are in conflict with the PBV program can only be considered a conditional approval at best. Such conflicts must be resolved prior to AHAP.

The issue of an elevator high-rise project that may serve families with children was addressed above in reference to the Ashby Lofts development and can be addressed by the BHA in the same manner.

The Allston House development is the last project that was addressed in the BHA letter. Of the four projects that the BHA discussed in their August 24th letter, this was the only project that this Office determined did not meet the threshold requirements and did not receive a passing score of 60 points.

The first issues addressed, relative to the Allston House, are threshold requirements. The BHA letter states that the lease agreement was on file with the Housing Department and because the BHA staff had this information available to them they were able to determine site control. The application submitted by the applicant contained proof that someone else owned the property, but there was no documentation contained in the application that demonstrated that the applicant had a commitment from the owner to allow the planned construction and subsequent project basing at the site, nor that the owner would sell the property to them. It is the applicant's responsibility to submit a complete application. It would appear that the BHA inappropriately completed the application process for the applicant. This is in conflict with the HA's PBV administrative policies and the application under the RFP which specifically required the applicant to provide evidence of site control, not the BHA.

The BHA implies, in their August 24, 2006, letter, that the threshold requirement relative to lead based paint was not really a threshold requirement. "The purpose of stating this as a threshold requirement is to reinforce to the applicant that the City will require them to comply with this as part of the rehabilitation." Since this requirement was listed on the evaluation sheet rather than the application itself, it is difficult to see how this reinforced anything to the applicant. Further, this requirement is shown not only as a part of the approved selection criteria but is also stated as a threshold requirement in the BHA's PBV Administrative Plan. Clearly the BHA intended the lead based paint requirements to be a threshold requirement.

The second issue addressed relative to Allston House is the score of 51 points. The BHA does not agree with HUD's rating of zero points for Project Criteria. The BHA's letter states that there is no section in the application that specifically asks the applicant to demonstrate how the project meets the City's priorities, etc. based on information in the City's Consolidated Plan. In other words the City is rating the project based on information that is not in the Application. In rating the applications this Office assigned points based on information contained in the application and followed the BHA's approved selection criteria and administrative policies. The BHA further argues that because this project was later awarded other funding under the State's MHP program and tax credits, and these competitive selections also require a project to

demonstrate that it would meet local housing needs and priorities, that points should be assigned for this criteria. Unfortunately the applications submitted for PBV assistance by the deadline set under the RFP, did not demonstrate that that the project met the required criteria. It should be noted that other applications were assigned points under this criteria because the applications contained documentation that demonstrated that criteria was met, including a project that was submitted by the same applicant for a different project.

The BHA does not agree with HUD's rating for Financing and Leverage. The BHA states that the application asked applicants to provide a list of potential sources of financing for the project. This request is not consistent with the approved selection criteria "Construction and rehabilitation is financially feasible and being financed through..." The approved criteria, does not ask for "potential" sources of financing. An objective determination of a project's feasibility and an assignment of points would not be possible based on "potential" financial sources. The project only becomes feasible when there is some indication of a commitment or interest on the part of the financial resource to provide funding. As stated above points were assigned based on information contained in the application, the approved selection criteria and administrative plan. Only information that was available at the time the application was submitted under the RFP for Project-Based Voucher assistance can be considered.

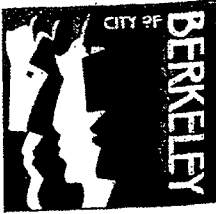
The selection of projects to be awarded PBV assistance must be performed in a manner that applies a PHA's written policies and criteria fairly and objectively, avoids conflicts and identities of interest, and assures against pre-selection of awards. Because of the BHA's identity of interest with the applying projects, our office was required to review the applications in accordance with the Initial Guidance to the Project Based Voucher Program, dated January 16, 2001. Although you may not agree with our decision, I trust this letter has responded to your concerns with our review.

Sincerely,



Stephen Schneller  
Director  
Office of Public Housing

cc: Phil Kamlarz, City Manager  
2180 Milvia Street  
Berkeley, CA 94704



Housing Department  
Office of the Director

September 28, 2006

Mr. Stephen Schneller  
Director, Office of Public Housing – Region IX  
U.S. Department of Housing and Urban Development  
600 Harrison Street  
San Francisco, CA 94107-1387

Subject: Preservation Project At Risk

Dear Mr. Schneller:

We have received your letter of 9/18/06 regarding the subject of the Berkeley Housing Authority process for approval of allocations of Section 8 vouchers to affordable housing developments and look forward to meeting with you at the HUD Office of Public Housing next Tuesday, October 3<sup>rd</sup>. In preparation for the meeting, I would like to bring to your attention the matter of Allston House, a 47-unit preservation project that is now at risk of falling apart due to the delay in approval of its project-based Section 8 voucher allocation. We will work with the HUD Office of Public Housing to address the issues with respect to all six projects in question, however, since Allston House is at a critical point in the development process, we hope we can come to some resolution at our meeting next Tuesday.

Allston House is a preservation project, which means it is a high priority for the City of Berkeley, as well as HUD. The building was originally built in 1967 as affordable housing using the HUD 221(d)(3) program. The owner opted out of the program and increased rents on the units to market rate. Approximately 20 original tenants remain in the building and virtually all the current tenants are low-income. In 2004 Affordable Housing Associates (AHA), with assistance from the City, negotiated a lease agreement with an option to purchase the building and was able to temporarily save the remaining affordable units and has undertaken to return the entire building to affordable, below-market status. If this project were to not move forward because it did not receive its project-based vouchers, we would be letting down 47 low-income households that need the assisted housing this building originally provided and the full rehabilitation of a building that they have been promised and that they need.

Preservation Project At Risk  
From Stephen Barton, City of Berkeley, 9/28/2006

Allston House is at a critical stage in the development process and will lose its project financing if it does not receive the allocation of project-based vouchers within the calendar year. The project was underwritten assuming the Project-based Section 8 assistance and cannot move forward without these funds. The project has financing based on 30-year term loan with US Bank, a state Multifamily Housing Program grant, and Low Income Housing Tax Credit equity. The bottom line is, without the Project-Based Section 8, and more importantly, the loan that it leverages, the project will have an \$800,000 gap and could not move forward. In addition, Affordable Housing Associates, the nonprofit project sponsor, would be given Negative Points by the state Tax Credit Allocation Committee, California Debt Limit Allocation Committee, and state Multifamily Housing Program for receiving commitments and not using them, and will be disqualified for many years from doing further affordable housing developments in California.

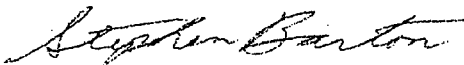
In our letter of August 24, 2006, BHA demonstrated that Allston House has met all of the program requirements – the project meets the City's housing priorities, the project developer has site control, it proposed a viable financing plan that has subsequently received all necessary commitments except its project-based Section 8 AHAP and the nonprofit project sponsor completed a lead-based paint survey report and a plan to address that issue. However, this was not acceptable to the Office of Public Housing due to the process and timing under which the City obtained this information and thus the project was disqualified on procedural grounds.

We have acted in good faith and these issues were been handled following the normal process for the City of Berkeley and its Housing Authority, a process that is fairly standard for most local government programs supporting affordable housing development. The developer has in good faith relied on our approval of the project-based Section 8 assistance. We are prepared to argue in detail regarding the validity of our interpretation of the allocation process that we established. However, whether you agree with us or not, we hope you will agree that terminating the project is not the appropriate remedy for procedural errors. The BHA will be happy to work with the HUD Office of Public Housing to make changes in our allocation process for Project-Based Section 8. Such changes could entirely eliminate the issues that you have raised regarding this project, and if delay would not result in killing the project we would simply make the changes and redo the process.

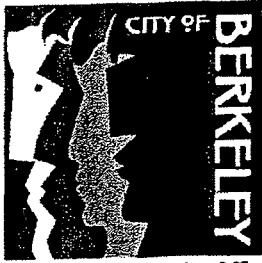
This project meets all statutory requirements, requires no waivers of the HUD regulations, and as a preservation project is of a nature that is a national as well as local housing priority. It is within your discretion to approve or deny.

I look forward to our meeting next week. In the meantime, please do not hesitate to call me at (510) 981-4501 if you have any questions.

Sincerely,



Stephen Barton, Ph.D.  
Director of Housing  
City of Berkeley




Office of the Executive Officer

INFORMATION CALENDAR

October 10, 2006

To: Honorable Chairperson and  
Members of the Housing Authority

From:  Phil Kamlarz, Executive Officer

Submitted by: Stephen Barton, Housing Director, and Tia Ingram, BHA Manager

Subject: Status of Housing Authority Operations

INTRODUCTION

This monthly update to the Board is somewhat different in format from previous updates. Along with a summary of recent developments, I am attaching Acting BHA Manager Tia Ingram's initial report to me on the current state of the BHA and the changes she is making to improve operations. Along with the progress and changes Ms. Ingram reports, the major new development concerns the use of project-based Section 8 vouchers.

CURRENT SITUATION AND ITS EFFECTS

Troubled Status

As we reported last month, the BHA submitted its SEMAP report to HUD with a passing score. The BHA staff has not yet heard back as to when HUD will conduct its review and verification of the report. Under its rules, HUD should complete its review and provide a response by October 31, 2006.

Payment Standard

Once HUD has responded and the BHA can meet the requirement to have received bonus points for deconcentration in the SEMAP process, the BHA will immediately file a request to use its previous, higher payment standard based on rents at the median (50<sup>th</sup> percentile) rather than the current standard based on rents at the 40<sup>th</sup> percentile. If this request is not approved, the BHA will have to lower its monthly rent subsidy for a significant number of tenants beginning on March 1, 2006.

Governance Revisions

Staff continues to work on alternatives, with a particular focus on creation of a separate BHA Board that does not overlap with the City Council, and will bring proposals back to the Board at its November meeting for further policy direction. Ms. Ingram is also drafting an improvement plan for agency operations in which many of the issues reviewed in her attached report will be addressed.

Project-Based Section 8

In a new development, HUD informed staff in June 2006 that since allocations of Project-Based Section 8 assistance were made to projects that received City assistance prior to the BHA allocation, this created an "identity of interest" that requires HUD review and approval of all such allocations. City staff was unaware of the "identity of interest" rule at the time of the allocation process.

Staff provided HUD with the files related to the allocation of project-based Section 8 and in August, after completing its review, HUD disqualified allocations to three projects. Since then staff has engaged in discussions with HUD regarding their decision and those discussions have now been completed. HUD has revoked the allocation of forty-one Section 8 vouchers to Prince Hall Arms at 3132-38 Martin Luther King Jr. Way, a proposed new construction project with senior housing by the Prince Hall Masons, and the allocation of four Section 8 vouchers to 2500 Hillegass, a proposed rehabilitation project in a property already owned by Affordable Housing Associates. The 2500 Hillegass project is a small one, and is not time-sensitive. Staff will work with AHA to find other sources of funding. We will plan to bring a report on the status of the Masons project to the Housing Advisory Commission and the Council shortly. The loss of project-based Section 8 means that the Masons project has lost its major source of subsidy. At this point the only way to restore project-based voucher allocations to these projects would be for them to resubmit applications during a new allocation process.

HUD agreed to reconsider its decision regarding the allocation of twelve Section 8 vouchers to Allston House, 2121 Seventh Street, which is a project by AHA to acquire, preserve and rehabilitate an affordable housing project that had been moved to market rate rents by the current owner. HUD agreed to reconsider the Allston House project due to the exceptional circumstances of the project, which is a preservation project with all funding now in place. We expect to receive their final decision shortly. The project-based vouchers are essential if this project is to move forward.

HUD did not agree with the evaluation conducted by City staff and the Housing Advisory Commission in recommending these projects to the Board. Among the issues HUD raised is that the City relied on information available from previous interactions and previous allocation processes such as the Housing Trust Fund process, rather than ensuring that all necessary information was contained within the application to the BHA for project-based vouchers. In HUD's view this is both an illustration of the identity of interest problem and an improper procedure. City staff agreed with HUD that, had they known of the identity of interest issue at the time, they would have followed a different

procedure. Staff asked that HUD's evaluation focus on the substantive value of the projects and not simply on the process issues and HUD responded that in their view both areas were addressed in the review.

While City staff does not agree with HUD evaluation of the disqualified projects, under the program rules the decision is within HUDs discretion, and the City's previous method of handling the application and evaluation process was not carried out in a way that provided the separation of City and BHA allocation review that HUD considers necessary.

In addition to the disqualifications, HUD approved the project-based allocations to the other three projects that received allocations: University Avenue Senior Housing (1535 University Avenue), Ashby Lofts (1001 Ashby), Oxford Plaza Apartments (Oxford at Kittredge). HUD informed us that two of these projects, Ashby and Oxford, counted as "elevator high-rise" projects because they are five and six stories with an elevator and will serve families with children. We will need to submit an explanation to the San Francisco Regional Office as to why development at these heights is essential in certain areas of Berkeley. In addition, the Oxford project will require two waivers from HUD Washington allowing the project to combine project based Section 8 with funding from the Housing for People With AIDS (HOPWA) program and allowing use of project based Section 8 in a high poverty census tract. Up to now HUD has never denied a waiver for use of HOPWA funding, but the HUD staff warned us that HUD reserves the right to change its practice in granting waivers at any time. With regard to the downtown census tract, we have already done demographic analysis that shows that the apparent high poverty rate is the result of incomes found in the 18-24 student age group. We plan to submit the waiver requests shortly.

#### FISCAL IMPLICATIONS

Unknown at this time.

#### CONTACT PERSON

Tia M. Ingram, Acting Housing Authority Manager, (510) 981-5471

#### Attachments:

1. 9/27/06 Initial Status Report from T. Ingram, Acting Housing Authority Manager



U.S. Department of Housing and Urban Development  
San Francisco Regional Office - Region IX  
600 Harrison Street  
San Francisco, California 94107-1387  
www.hud.gov  
espanol.hud.gov

OCT 20 2006

Mr. Stephen Barton  
Director of Housing Programs  
City of Berkeley Housing Authority  
2180 Milvia Street  
Berkeley, CA 94704

Dear Mr. Barton:

Subject: Allston House Application Rating for Project-Based Vouchers

This is in response to your letter of September 28, 2006, and our discussions on October 3, 2006, concerning approving Project Based Voucher assistance to the Allston House development. This Office reviewed the applications from six projects for the City of Berkeley Housing Authority (BHA) due to the City of Berkeley's identity of interest with these projects.

As you are aware, our office determined that the Allston House application did not meet the threshold requirement nor did it receive a passing score under the RFP criteria. You have requested special consideration for approval of this project. And you have stated that the project is in a critical stage of development and without approval of the project-based voucher assistance within the next month the project will lose critical funding. You further state that if this project loses this funding it will not be able to proceed at this time, which will have a detrimental impact on the owner, Affordable Housing Associates (AHA) meeting its tax credit allocation commitment and that this in turn will disqualify AHA from being able to do further affordable housing developments in California for many years.

I have considered your request and determined that we are unable to approve this project for Project Based Voucher assistance. My decision is based on three factors. First, the Allston House application cannot be approved due to a lack of supporting documentation. Second, the BHA board approved the renewal contracts for this project before the initial HAP contract had been executed and approved a contract term of 20 years when the statutory limit of a contract is ten years. And third, BHA conducted a soft closing in late August with US Bank after receiving a letter from our office notifying BHA that the Allston House project was not approved.

HUD's review of a Project Based application is strictly based on approved criteria, the instructions in the RFP, and the content of the application. In the case of the Allston Housing application, there was not sufficient supporting documentation in the application for our office to award certain points. As you stated in our meetings, the BHA's internal review and scoring of the

Allston House application was based on information BHA was aware of from their previous experience with the owner. This identity of interest benefited the owner significantly when BHA rated the application, however, since certain supporting documentation was lacking from the application, HUD has no basis on which to award points under those criteria.

The BHA's identity of interest with the Allston House project gave the project an unfair advantage in the competition for Project Based Vouchers when originally reviewed by the BHA. Unfortunately, the BHA's familiarity with the project may also have precluded the applicant from submitting a complete application. I have now re-reviewed the Allston House application to confirm that points had been assigned in an objective manner by HUD based on the application and documentation submitted by the applicant and made available by BHA.

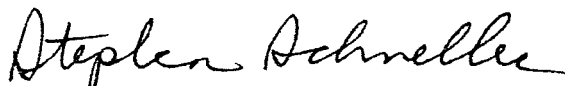
Second, the BHA board approved the renewal contracts for this project before the initial HAP contract had been executed and approved a contract term of 20 years when the statutory limit of a contract is ten years. At the Berkeley City Council meeting of July 25, 2006, the Board of Commissioners approved Resolution #725. This Resolution was for the sole purpose of allowing the BHA to approve two renewal Project Based Voucher Housing Assistance Payment (HAP) contracts for the Allston Housing project. The statute allows for a maximum initial term for the HAP contract of ten years. Renewals are allowed in five-year increments. The BHA board acted inappropriately in approving two renewals of the initial term of the HAP contract. BHA cannot approve the renewal contracts for this specific project before the initial HAP contract has been executed. The effect of this resolution is to approve an initial commitment for 20 years specifically for Allston House. This is in conflict with the statutory intent of the law that limits the initial contract term to 10 years. Additionally, this resolution approved renewals prior to the project having met all the requirements necessary to enter into an Agreement to execute a Housing Assistance Payment (AHAP) contract.

Last, at our meeting you advised us that BHA conducted a soft closing on the Allston House project in late August with US Bank after receiving notice from our office that the Allston House application must be reviewed and approved by HUD prior to awarding Project Based Vouchers. Further, the soft closing occurred after receipt of our August 7, 2006, letter that notified the BHA of our determination that the project was not approved for Project Based Voucher Assistance. BHA continued to proceed as if HUD had approved this project when HUD had not.

We fully understand the critical need for affordable housing and support increasing the number of affordable housing units available in your community; however, it should not come at the expense of program integrity. In discussing the scoring and review of this project, we have uncovered problems that go beyond application deficiencies. While the use of Project Based Voucher assistance to leverage funding is a proper use of the funding available under this program, it cannot be done in a manner that is in conflict with the statutory intent or in violation of

regulations. To award this project Project Based Vouchers under these circumstances would place the BHA in further non-compliance and subject it to funding recapture and other sanctions. Therefore we are unable to approve this project for Project Based Voucher assistance.

Sincerely,



Stephen Schneller  
Director  
Office of Public Housing

cc: Phil Kamlarz  
City Manager  
City of Berkeley  
2180 Milvia Street, 2nd Floor  
Berkeley, CA 94704