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Via U.S. Mail

April 1, 2015

Mr. Jody Gibbs
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Mr. Demion Clinco
TUCSON HISTORIC
PRESERVATION FOUNDATION
P.O. Box 40008
Tucson, Arizona 85717

Re: *March 18, 2015 Request for Reconsideration of Downtown Motor Lodge Project LIHTC Funds and Gap Financing ("Reconsideration Request")*

Dear Messrs. Gibbs, McClain and Clinco:

The Arizona Department of Housing ("ADOH") is in receipt of your above-referenced Reconsideration Request concerning a 2014 Low Income Housing Tax Credit ("LIHTC") project commonly known as Downtown Motor Lodge, located in Tucson, Arizona ("DML Project"). In response, ADOH first summarizes below the factual history, from information presently available to ADOH, of the DML Project as it relates to an award of LIHTC tax credits, GAP financing that may be available and the present development status of the DML Project. Based upon that factual history, ADOH addresses the three points raised in the Reconsideration Request that you believe warrant the revocation and cancellation of the LIHTC tax credits awarded for the DML Project and of GAP financing that may be provided by ADOH.

FACTUAL HISTORY

The LIHTC program, established by the Tax Reform Act of 1986 and codified in § 42 of the Internal Revenue Code of 1986, as amended, encourages construction and rehabilitation of low-income rental housing. ADOH is the

housing credit agency responsible for allocating tax credits, on a competitive basis, to owners of qualifying residential rental projects. ADOH allocates tax credits pursuant to a Qualified Allocation Plan ("QAP"), the terms and conditions of which are based upon the QAP in effect for that year. An award of tax credits, among other criteria, is based upon (i) an applicant obtaining a score on the application sufficient for the allocation of tax credits; (ii) satisfaction of threshold and underwriting requirements set by ADOH; and (iii) satisfactory completion of the housing project. Scoring, of course, is based upon certain criteria set forth in the applicable QAP in the given year.

It is up to the applicant to request points in a particular scoring category under the QAP for scoring purposes. If an applicant chooses not to receive points for a particular scoring category, such as a Historic Preservation Project, then the criteria relating to that particular scoring category does not apply to that application. As for the evaluation of the threshold and underwriting requirements, it is an ongoing process, where, under certain circumstances, an applicant might receive a reservation letter for tax credits, but the applicant's failure to satisfy all applicable threshold and underwriting requirements results in a revocation of the tax credits. (See § 7 of 2014 QAP.)

ADOH, and other public agencies, also may provide "Gap" financing in connection with the award of tax credits, such that State funds known as "Housing Trust Funds" ("HTF") or federal HOME funds may be loaned to an applicant for the particular project based upon certain criteria and funding availability.

In this case, the applicant of the DML Project applied for, and did receive a reservation of, tax credits in 2014 under the 2014 QAP. The applicant did not request or receive points, for scoring purposes, as a "Historic Preservation Project" under the 2014 QAP. The owner of the DML Project did request Gap financing from ADOH, as well as from the City of Tucson. The Gap Financing Application submitted to ADOH indicated that the project involves the demolition of buildings that are 50 years or older and that the project may affect historical, archeological or cultural resources. As a result of the information provided in the Gap Financing Application, ADOH requested that the developer confirm with the Certifying Local Government, i.e., the Tucson Historic Preservation Officer, that the project will not have an adverse effect as proposed. (See 5/7/2014 Letter.) Historic Preservation Officer Jonathan Mabry indicated, after consultation with the Arizona State Historic Preservation Office ("SHPO"), that the adverse effect of partial demolition of the DML Project will be mitigated by architectural documentation to SHPO standards, with no additional "Adverse Effect" on any historical, archaeological or cultural resources. (See 5/13/2014 Letter.)

While Mr. Mabry concluded, based upon local review, that the partial demolition involved in the DML Project will be mitigated with no additional "Adverse Effect", in October of 2014, Zach Carter of the Office of Environment and Energy, Region 9 U.S. Department of Housing and Urban Development, indicated that partial demolition requires the full procedures of 36 CFR 800, i.e., the § 106 consultation process. (See 10/7/2014 E-mail.) The § 106 consultation process broadens the review and evaluation of the proposed partial demolition of structure(s) for the DML Project beyond just a local review, as detailed in Mr. Carter's 10/7/2014 e-mail and the March 9, 2015 letter from the Advisory Council on Historic Preservation to Sally Stang, Director of Housing and Community Development Department for the City of Tucson.

In this case, the applicant of the DML Project has until December 31, 2016 to (i) complete all threshold and underwriting requirements of the 2014 QAP, (ii) satisfy all Gap financing terms and conditions imposed by both the City of Tucson, ADOH, and other lenders involved, and (iii) place in service the DML Project by the issuance of a temporary Certificate of Occupancy by the governing building authority. The satisfaction of lending

requirements is left up to the particular lender. In this case, however, if the City of Tucson uses HOME funds for the Gap financing provided to the applicant, the City of Tucson would need to provide HUD's Authority to Use Grant Funds, which would signify that all applicable reviews, including the § 106 consultation process, have been completed. Of course, ADOH has no involvement in the City of Tucson's use of HOME funds, or other funding availability for the transaction. The Gap financing to be provided by ADOH is from "Housing Trust Funds", governed by the 2013-2014 State Housing Fund Program Summary & Application Guide, Revised 1-29-2014, § 1.9 (F), which provides that: "Projects funded solely with HTF are required to meet the requirements of the State Historic Preservation Act. Applicants must consult with the State Historic Preservation Officer ("SHPO"), including the Tribal Historic Preservation Officer, if applicable."

As of this writing, the applicant for the DML Project has approximately eleven months remaining to complete the § 106 process based upon the applicant's current schedule.

ADOH RESPONSE TO:
REQUEST FOR RECONSIDERATION OF
TAX CREDITS RESERVED FOR THE DML PROJECT

Three inquiries were made in your March 18, 2015 Letter. Specifically, you inquired whether the LIHTC tax credits reserved for the DML Project should now be revoked and cancelled because: (i) Mr. Mabry issued his 5/13/2014 Letter based upon his consultation with SHPO; (ii) the broader review imposed by § 106 consultation process was not completed as of 5/13/2014; and (iii) ADOH is using HTF funds as Gap financing when § 106 consultation process may never be completed in time, i.e., December 31, 2016, the date by which the applicant has to place the DML Project in service.

As to whether Mr. Mabry's 5/13/2014 Letter, without a broader review that may otherwise be required through the § 106 consultation process, somehow violated the 2014 QAP, please understand that the 2014 QAP did not call for a § 106 consultation process when an applicant requested points for Historic Preservation Project. (See Section 2.9(Y)(2) on page 58 under TAB 25 of the 2014 QAP.) Thus, Mr. Mabry's 5/31/2014 Letter does not violate Section 2.9(Y)(2). Even assuming, however, that a § 106 consultation process was required under the 2014 QAP, because the applicant for the DML Project did not request points for a Historic Preservation Project, Section 2.9(Y)(2) did not apply. Accordingly, there was no violation of the 2014 QAP as a result of the 5/13/2015 Mabry Letter.

Regarding the broader review required through the § 106 consultation process, as suggested by Mr. Carter and the Advisory Council on Historic Preservation, it is significant to note that the applicant for the DML Project has another 11 months to undertake the activity necessary to comply with § 106. Thus, to the extent that § 106 applies, there remains time within which to complete the review process and there is no basis at this juncture to revoke and cancel the 2014 reservation of tax credits. As significant, to the extent that HOME funds are not used in the financing of the DML Project, the § 106 consultation process would not be triggered.

Finally, ADOH has identified HTF funds to be used for Gap financing for the DML Project. HTF is governed by the 2013-2014 State Housing Fund Program Summary & Application Guide, Revised 1-29-2014, § 1.9 (F). Where projects are funded solely with HTF, the requirements of the State Historic Preservation Act apply. That said, applicants must consult with the SHPO to confirm that all applicable requirements are met. In this instance, the

5/13/2014 Letter issued by Mr. Mabry satisfies such requirements. The § 106 consultation process does not apply to the administration of HTF funds in relation to the DML Project.

In conclusion, and while this response may appear to be somewhat lengthy, ADOH finds it invaluable to reply to your inquiries in detail, with notation to the factual background and applicable authority. The public interest is well served by your inquiries and by the information provided by Mr. Carter and the Advisory Council on Historic Preservation. ADOH looks forward to further review of the DML Project as the matter progresses. Please do feel free to contact ADOH if you wish to discuss the matter further or have additional information to share.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Traylor". The signature is stylized and cursive.

Michael Traylor
Director