

Memorandum

To : Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Member
Honorable Bill Leonard
Honorable Steve Westly

Date: November 23, 2005

From : Kristine Cazadd *K. Cazadd*
Chief Counsel, Legal Department

Subject: **Chief Counsel Matters – December 13, 2005 Board Meeting**
Proposed Welfare Exemption Rules

- Proposed Rule 140 - Welfare Exemption Requirements for Low-Income Housing Properties
- Proposed Rule 140.1 - Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties
- Proposed Rule 140.2 - Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties
- Proposed Rule 143 - Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption

Staff recommends that the Board approve for publication the referenced proposed Property Tax Rules 140, 140.1, 140.2 related to the welfare exemption for low-income housing properties under Revenue and Taxation Code¹ section 214, subdivision (g) and proposed Property Tax Rule 143 related to the requirements for qualifying irrevocable dedication and dissolution clauses for nonprofit organizations claiming the welfare exemption under section 214, all of which are attached hereto as Exhibit 1.

INTERESTED PARTIES PROCESS

In September 2004, staff commenced the interested parties process for the proposed welfare exemption rules in response to requests by assessors and other interested parties for clear guidance with respect to the requirements for the welfare exemption for low-income housing properties, in general, and the requirements for a qualifying nonprofit managing general partner (MGP) of a limited partnership, in particular. Since the commencement of the interested parties process, staff

¹ Unless otherwise specified, all statutory references are to the Revenue and Taxation Code.

has held two interested parties meetings; the first was held on March 16, 2005, and the second was held on May 11, 2005.

On May 11, 2005, at the second interested parties meeting, staff and interested parties resolved all of the issues with respect to proposed Rules 140, 140.2, and 143. The only unresolved issues related to proposed Rule 140.1, regarding the definition of a MGP of a limited partnership. The primary issue was whether the MGP should be requirement to perform more than two of the partnership management duties listed under subdivision (a)(10) of proposed Rule 140.1.

JUNE 30, 2005 BOARD MEETING

At the June 30, 2005 Board meeting, staff requested permission to publish the proposed welfare exemption rules. At the meeting, interested parties made comments regarding the definition of the MGP under proposed Rule 140.1. The Board voted to defer consideration of the matter.

RESOLUTION OF ISSUES AFTER JUNE 30, 2005 BOARD MEETING

Subsequent to the June 30, 2005 Board meeting, in October 2005, the proposed welfare exemption rules were informally discussed at the annual Board meeting with the county assessors' in Monterey, California. Thereafter, staff communicated with various county assessors and industry members to determine if the issues related to the definition of the MGP could be resolved. Following numerous telephone conversations, a general consensus was reached by a majority of the interested parties including, but not limited to, the California Assessors' Association, Rick Auerbach, Los Angeles County Assessor, Santa Clara County Assessor's Office, and Stephen Ryan of Cox Castle and Nicholson LLP that: (1) the MGP should be required to perform 5 of 12 partnership management duties listed in subdivision (a)(10) of proposed rule 140.1; (2) the provision of charitable services or information related thereto should be added to the list of partnership management duties under (a)(10); (3) the MGP should be required to perform an annual physical inspection of the low-income housing property; and (4) the MGP should be required to give an annual certification that the low-income housing property meets all of the requirements to qualify for the welfare exemption (discussed in detail below).

On November 8, 2005, staff posted the revised proposed Rule 140.1 on the Board's Web site (attached hereto as Exhibit 1). Staff revised proposed Rule 140.1, which was previously presented to the Board at the June 30, 2005 Board meeting,² to provide a stricter standard that the nonprofit MGP of a for-profit limited partnership must meet in order for the low-income housing property owned by the limited partnership to qualify for the welfare exemption. To create greater accountability by the nonprofit MGP to ensure that the low-income housing property meets all of the requirements to qualify for the welfare exemption, the revised proposed Rule 140.1 (attached as Exhibit 1) makes the following changes from the prior draft:

1. Definition of "Material Participation" - Subdivisions (a)(7)(iv) and (v) was added to require an annual physical inspection and certification by the managing general partner (MGP):

(a)(7) "Material participation" means that the limited partnership agreement or other

² See Exhibit 1 – Proposed Rule 140.1, with blacklined changes.

agreement executed by all of the general partners expressly provides that the managing general partner:

* * *

- (iv) annually conducts a physical inspection of the low-income housing property to ensure that the property is being used as low-income housing and meets all of the requirements set forth in Regulation 140; and
- (v) annually submits a certification to the county assessor for the county in which the property is located that the low-income housing property meets all of the requirements set forth in Regulation 140.

2. Definition of “Substantial Management Duties” - Subdivision (a)(10)(xii) was added regarding the provision of charitable services or information related thereto as an additional partnership management duty, which may be performed by the MGP, thereby increasing the list of possible partnership management duties to be performed by the MGP from 11 to 12 and the definition of “substantial management duties” provided in subdivision (a)(10) was revised to require the MGP to perform 5 of the 12 listed partnership management duties, rather than the former 2 of 11 listed partnership management duties.

(a)(10) "Substantial management duties" means that the managing general partner actually performs five ~~two~~ or more of the following partnership management duties on behalf of the limited partnership:

* * *

- (xii) ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after-school programs, cultural activities, family counseling, transportation, meals, and linkages to health and/or social services are provided or information regarding charitable services or benefits are made available to the low-income housing tenants.

GENERAL BACKGROUND

WELFARE EXEMPTION FOR LOW-INCOME HOUSING PROPERTIES

Section 214, subdivision (g) provides the requirements for the welfare exemption for low-income housing properties. Proposed Rules 140, 140.1, and 140.2 interpret and define the requirements to qualify for the welfare exemption under section 214, subdivision (g).

PROPOSED RULE 140

Welfare Exemption Requirements For Low-Income Housing Properties (Exhibit 1)

Proposed Rule 140 defines the terms “regulatory agreement,” “deed restriction,” “federal low-income tax credits,” “government financing,” “lower income households,” and “other legal document” as used in section 214, subdivision (g) with respect to the requirements for the welfare

exemption for low-income housing properties. Under section 214, subdivision (g)(1)(A) and (B), property used exclusively for rental housing and related facilities owned and operated by religious, hospital, scientific, or charitable fund, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company meeting all of the requirements for the welfare exemption under section 214, or by qualifying veterans' organizations described in section 215.1, are entitled to the welfare exemption if: (1) the owner of the property receives low-income housing tax credits or government financing for the particular property; and (2) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located. Additionally, section 214, subdivision (g)(1)(C) provides an alternative basis to qualify for the welfare exemption for low-income housing properties owned by qualifying nonprofit organizations, other than properties owned by limited partnerships with a nonprofit managing general partner, if 90 percent or more of the occupants of the property are lower income households whose rent do not exceed the rent prescribed by section 50053 of the Health and Safety Code; however, the total exemption amount allowed statewide under this subdivision to a taxpayer with respect to a single or multiple properties for any fiscal year may not exceed \$20,000 in tax.

PROPOSED RULE 140.1

Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties (Exhibit 1)

Proposed Rule 140.1 defines the term "managing general partner" of a limited partnership and the requirements that the MGP must meet in order for the low-income housing property, owned and operated by the limited partnership, to qualify for the welfare exemption.

PROPOSED RULE 140.2

Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties (Exhibit 1)

Proposed Rule 140.2 sets forth the requirement that the limited partnership, in which the MGP is a qualifying nonprofit organization, must file an application for a supplemental clearance certificate with the Board for each low-income housing property for which it intends to claim the welfare exemption, certifying that it meets all of requirements under section 214, subdivision (g), to qualify for the welfare exemption.

IRREVOCABLE DEDICATION AND DISSOLUTION CLAUSES FOR ALL WELFARE EXEMPTION CLAIMS

Section 254.5 provides that a county assessor may not approve a welfare exemption claim unless the claimant has been issued an organizational clearance certificate ("OCC") by the Board as provided in section 254.6. Among other requirements, in order to qualify for an OCC from the Board, the claimant's formation documents, such as the articles of incorporation, must contain both an irrevocable dedication clause and a dissolution clause. Section 214, subdivision (a)(6) provides that, in order for property owned and operated by nonprofit organizations to qualify for the welfare exemption, property owned by a nonprofit organization must be irrevocably dedicated to a qualifying purpose, and upon liquidation, dissolution, or abandonment of the nonprofit organization, the property will not inure to the benefit of any private person except another qualifying nonprofit organization. Section 214.01 specifically provides that the nonprofit organization's formation

documents must contain an irrevocable dedication clause. Proposed Rule 143 interprets and defines the requirements for a qualifying irrevocable dedication and dissolution clauses.

PROPOSED RULE 143

Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption (Exhibit 1)

Proposed rule 143 clarifies the requirements for qualifying irrevocable dedication and dissolution clauses under section 214, subdivision (a)(6), which is a prerequisite for obtaining an OCC under section 254.6.

COMMENTS FROM INTERESTED PARTIES

In response to the revised Rule 140.1 posted on the Board's Web site on November 8, 2005, staff received comments from 23 interested parties. (See Exhibit 10 – Matrix for Comments for Proposed Rule 140.1 and Exhibit 11 – Matrix for Comments for Proposed Rule 140.2.)

Comments in Support of Staff's Proposed Rules

Staff has received comments from the following ten interested parties in support of staff's proposed rules: (1) California Assessors' Association; (2) California State Association of Counties; (3) League of California Cities; (4) Rick Auerbach, Los Angeles County Assessor; (5) Lawrence E. Stone, Santa Clara County Assessor; (6) Cathy Colt, San Bernardino County Assessor's Office; (7) Stephen Ryan, Cox Castle and Nicholson LLP; (8) Michael Stein, Michael M. Stein, Inc.; (9) David Kunhardt, Community Investments; and (10) Greg Langer, Resch Polster Alpert & Berger (see Exhibit 2).

Comments Regarding Proposed Rule 140.1

Requesting a More Liberal Standard for Definition of Managing General Partner

Staff has received comments from the following three interested parties in support of a more liberal definition of MGP: (1) Rick Taylor, California Association of Homes and Services for the Aging (see Exhibit 3); (2) Joel Rice, Law Offices of Patrick R. Sabelhaus (see Exhibit 4); and (3) Patrick R. Sabelhaus, Law Offices of Patrick R. Sabelhaus (see Exhibit 4).

Comments Regarding Proposed Rule 140.1

Requesting a Stricter Standard for Definition of Managing General Partner

Staff has received comments from the following two interested parties in support of a stricter definition of MGP: (1) Ken Robertson, Riverside Charitable Corporation (see Exhibit 5); and (2) Jay Powell, City Heights Community Development Corporation (see Exhibit 6).

Comments Regarding Proposed Rule 140.2, subdivision (c)(3)

Ensure that Property Tax Exemption Directly Benefits the Low-Income Housing Tenants

The following eight individuals suggest revising proposed Rule 140.2, subdivision (c)(3) to provide more detailed language to ensure that the funds necessary to pay property taxes are used to maintain affordability of, or reduce rents otherwise necessary for, the units to be occupied by lower income households: (1) Don Falk, Tenderloin Neighborhood Development Corporation (see Exhibit 7); (2) Joel Rubenzahl, Community Economics, Inc. (see Exhibit 8); (3) Lenny Goldberg, California Tax Reform Association (see Exhibit 8); (4) Fran Wagstaff, Mid-Peninsula Housing Coalition (see Exhibit 8); (5) Mary Murtaugh, EAH, Inc. (see Exhibit 8); (6) Michael Rawson, California Affordable Housing Law Project (see Exhibit 8); (7) Joshua Simon, East Bay Asian Local

Development Corporation (see Exhibit 8); and (8) James R. Grow, National Housing Law Project (see Exhibit 9).

Staff did not include this suggestion because staff's proposed Rule 140.2, subdivision (c)(3) clearly sets forth the requirement that the MGP must certify that the funds necessary to pay property taxes are used to maintain affordability of, or reduce rents otherwise necessary for, the units to be occupied by the lower income households as required by Revenue and Taxation Code section 214, subdivision (g)(2)(B). Thus, if the MGP provides such certification, and the units designated for use by lower income households are made continuously available for rental to or occupied by lower income households at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code, we believe that the statutory requirement has been satisfied.

REVENUE IMPACT

No revenue loss resulting from the adoption of the proposed rules is anticipated. The definition of MGP of a limited partnership in proposed Rule 140.1 is more specific than the current definition of MGP as presently administered. Additionally, the requirements of a qualifying irrevocable dedication clause and dissolution clause under proposed Rule 143 reflect statutory requirements as presently administered. Therefore, the proposed rules do not expand the welfare exemption.

COST IMPACT

There is no cost impact to the Board as a result of the adoption of the proposed rules.

CONCLUSION

Staff recommends that the Board approve staff's draft of the proposed welfare exemption rules and authorize that a public hearing be scheduled, in order to proceed with the rule-making process. Proposed Rule 143 will clarify the requirements for irrevocable dedication and dissolution clauses under sections 214, subdivision (a)(6) and 214.01. Additionally, proposed Rules 140, 140.1, and 140.2 will provide clear guidance to for-profit and nonprofit developers, lenders, and tax credit investors, as well as the county assessors and the Board's staff as to the requirements to qualify for the welfare exemption for low-income housing properties under section 214, subdivision (g), thereby promoting clarity and consistency in the administration of the welfare exemption.

The staff's draft of the proposed rules for the welfare exemption for low-income housing, while providing more specific set of requirements than currently administered, provide flexibility to the low-income housing community to allow nonprofit organizations working with developers, lenders, and investors so that the low-income housing industry can structure their transactions according to the various business models consistent with the legislative intent to promote the production of low-income housing in California.

If you have any questions on this matter, please contact Ms. Selvi Stanislaus, Acting Assistant Chief Counsel, at (916) 324-2579, or Supervising Tax Counsel Sophia Chung at (916) 445-8485.

KEC:jlh

w/Exhibits 1-11

Rules/140, 140.1, 140.2, 143/Welfare.doc

cc: Mr. Ramon J. Hirsig, MIC:73
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Selvi Stanislaus, MIC:82
Ms. Mickie Stuckey, MIC:62
Mr. Stanley Siu, MIC:61
Mr. Todd Gilman, MIC:70
Ms. Anita Gore, MIC:86
Ms. Sophia Chung, MIC:82

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140**
6 **WELFARE EXEMPTION REQUIREMENTS**
7 **FOR LOW-INCOME HOUSING PROPERTIES**
8

9 **(a) DEFINITIONS.** The definitions set forth in this regulation shall govern the construction of
10 Revenue and Taxation Code section 214, subdivision (g):

11
12 (1) "Low-income housing tax credits" means that the property owner is eligible for and
13 receives state low-income housing tax credits pursuant to Revenue and Taxation
14 Code sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5 or federal low-
15 income housing tax credits pursuant to section 42 of the Internal Revenue Code.

16
17 (2) "Government financing" means financing or financial assistance from local, state or
18 federal government used for the acquisition, rehabilitation, construction,
19 development, or operation of a low-income housing property in the form of: (1) tax-
20 exempt mortgage revenue bonds; (2) general obligation bonds; (3) local, state or
21 federal loans; (4) local, state or federal grants; (5) any loan insured, held, or
22 guaranteed by the federal government; or (6) project-based federal funding under
23 section 8 of the Housing Act of 1937. The term "government financing" does not
24 include properties that solely receive federal rental assistance through tenant rent-
25 subsidy vouchers under section 8 of the Housing Act of 1937.

26
27 (3) "Other legal document" means a document that is adopted as a resolution or statement
28 of policy by an organization's board of directors, or executed by an organization's
29 chief executive officer, provided that the board of directors has delegated this
30 authority in writing to the chief executive officer, that restricts the property's use to
31 low-income housing, such that a minimum of 90% of the units of the property are
32 made continuously available to or occupied by lower income households at rent levels
33 defined in subdivision (c) below.

34
35 (4) "Lower income households" means "lower income households" as defined by section
36 50079.5 of the Health and Safety Code.

37
38 (5) "Recorded deed restriction" means a deed recorded as an encumbrance against title to
39 the property in the official records of the county in which the property is located,
40 which specifies that all or a portion of the property's usage is restricted to rental to
41 lower income households and identifies the number of units restricted to use as low-
42 income housing.

43
44 (6) "Regulatory agreement" means an enforceable and verifiable agreement with a
45 government agency that has provided low-income housing tax credits or government
46 financing for the acquisition, rehabilitation, construction, development or operation of
47 a low-income housing property that restricts all or a portion of the property's usage
48 for rental to lower income households. The regulatory agreement shall identify the

1 number of units restricted for use as low-income housing, specify the maximum rent
2 allowed for those units, and be recorded in the county in which the property is
3 located. Until such time as the Regulatory Agreement is finalized and recorded, the
4 Preliminary Reservation Letter from the California Tax Credit Allocation Committee
5 or California Debt Limit Allocation Committee Bond Cap Allocation Letter is
6 acceptable.

7
8 **(b) QUALIFIED CLAIMANTS.** Claimants may qualify for the welfare exemption for low-
9 income housing properties provided that the requirements set forth in either (1) or (2) below
10 are met:

11
12 (1) All claimants listed under Revenue and Taxation Code section 214, subdivision (g)(1) as
13 a qualifying organization, including limited partnerships in which the managing general
14 partner is an eligible nonprofit corporation or an eligible limited liability company, may
15 qualify for the exemption for a particular property provided that:

16
17 (i) the claimant receives low-income housing tax credits or government
18 financing for the particular property; and

19
20 (ii) the property is subject to a recorded deed restriction or a regulatory agreement
21 which is recorded in the county in which the property is located.

22
23 (2) All low-income housing properties, subject to restrictions imposed by an other legal
24 document, defined in subdivision (a)(3) above, owned by claimants listed under Revenue
25 and Taxation Code section 214, subdivision (g)(1) as a qualifying organization, other
26 than limited partnerships in which the managing general partner is an eligible nonprofit
27 corporation or an eligible limited liability company, qualify for the welfare exemption
28 but the amount of the exemption shall not exceed \$20,000 in tax for a single claimant
29 with respect to a single or multiple properties as provided in Revenue and Taxation Code
30 section 214, subdivision (g)(1)(C).

31
32 **(c) LOW-INCOME HOUSING TAX CREDITS AND GOVERNMENT FINANCING.**

33 For purposes of subdivision (b)(1)(i) above, a property has low-income housing tax credits or
34 government financing, as defined in subdivisions (a)(1) and (a)(2), respectively, for the
35 period of time that a regulatory agreement or recorded deed restriction restricts the use of all
36 or any portion of the property for rental to lower income households even if the government
37 financing has been refinanced or has been paid in full, or the allocation of the low-income
38 housing tax credits has terminated or expired, provided that the government agency that is a
39 party to the regulatory agreement continues to monitor and enforce compliance with the
40 terms of the regulatory agreement.

41
42 **(d) PERCENTAGE OF UNITS AND RENT.**

43
44 (1) For claims qualifying under subdivision (b)(1) above, an exemption shall be granted
45 equal to that percentage of the value of the property, which is made continuously
46 available for rental to or occupied by lower income households at rents that do not
47 exceed those prescribed by section 50053 of the Health and Safety Code, or, to the
48 extent that the terms of the regulatory agreement or recorded deed restriction conflict

1 with section 50053, rents do not exceed those prescribed by such terms.
2

- 3 (2) The percentage of the value of the property qualifying for the exemption is based on the
4 actual use of the property for rental to lower income households for the qualifying rent,
5 and is not limited to the percentage designated for use by lower income households in
6 the regulatory agreement, recorded deed restriction, or other legal document. Units
7 reserved for the resident property manager are included in the percentage of units that
8 qualify for the exemption.
9

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140.1 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140.1**
6 **REQUIREMENTS FOR MANAGING GENERAL PARTNER**
7 **OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**
8 **FOR LOW-INCOME HOUSING PROPERTIES**
9

10
11 (a) Definitions. The definitions set forth in this regulation shall govern the construction of
12 Revenue and Taxation Code section 214, subdivision (g), which provides the requirements
13 for the welfare exemption for low-income housing properties owned by a limited partnership
14 in which the managing general partner is an eligible nonprofit corporation.

15
16 (1) "General partner" means "general partner" as defined by section 15611, subdivision (n)
17 of the Corporations Code.

18
19 (2) "Limited partner" means "limited partner" as defined by section 15611, subdivision (q)
20 of the Corporations Code.

21
22 (3) "Limited partnership" means a "limited partnership" as defined by section 15611,
23 subdivision (r) of the Corporations Code, or a "foreign limited partnership" as defined by
24 section 15611, subdivision (l) of the Corporations Code.

25
26 (4) "Limited partnership agreement" means any valid written agreement of the partners as to
27 the affairs of a limited partnership and the conduct of its business, including all
28 amendments thereto.

29
30 (5) "Majority in interest of the general partners" means more than 50 percent of the interests
31 of the general partners, and does not include the interests of any of the limited partners,
32 in the current profits derived from business operations of the limited partnership.

33
34 (6) "Managing general partner" means a general partner that:

35
36 (i) is a nonprofit corporation, or an eligible limited liability company meeting the
37 requirements of Revenue and Taxation Code section 214, designated in the
38 limited partnership agreement as the "managing general partner" of the limited
39 partnership;

40
41 (ii) is authorized to receive a partnership management fee, or similar form of
42 compensation, payable in the amount and the manner set forth in the limited
43 partnership agreement or other agreement executed by all of the general
44 partners for performing its duties;

45
46 (iii) has "material participation," as defined in subdivision (a)(7) below, in the
47 control, management, and direction of the limited partnership's business; and
48

1 (iv) the officers and directors of the for-profit general partners, for-profit limited
2 partners, or any of its for-profit affiliates, do not, as individuals or
3 collectively, have a controlling vote or majority interest in the nonprofit
4 managing general partner.
5

6 (7) "Material participation" means that the limited partnership agreement or other
7 agreement executed by all of the general partners expressly provides that the
8 managing general partner:
9

10 (i) has a right to vote in all the "major decisions," defined in subdivision (a)(8)
11 below;

12
13 (ii) performs "substantial management duties," defined in subdivision (a)(10)
14 below; ~~and~~

15
16 (iii) directly, or indirectly under its supervision, manages the limited partnership;

17
18 (iv) annually conducts a physical inspection of the low-income housing property
19 to ensure that the property is being used as low-income housing and meets all
20 of the requirements set forth in Regulation 140; and
21

22 (v) annually submits a certification to the county assessor for the county in which
23 the property is located that the low-income housing property meets all of the
24 requirements set forth in Regulation 140.
25

26
27 (8) "Major decisions" means those acts, if any, that require a vote of a majority in interest
28 of the general partners.
29

30 (9) "Partner" means a limited or general partner.
31

32 (10) "Substantial management duties" means that the managing general partner actually
33 performs ~~two~~ five or more of the following partnership management duties on
34 behalf of the limited partnership:
35

36 (i) rents, maintains and repairs the low-income housing property, or if such duties
37 are delegated to a property management agent, participates in hiring and
38 overseeing the work of the property management agent;
39

40 (ii) participates in hiring and overseeing the work of all persons necessary to
41 provide services for the management and operation of the limited partnership
42 business;
43

44 (iii) executes and enforces all contracts executed by the limited partnership;
45

46 (iv) executes and delivers all partnership documents on behalf of the limited
47 partnership;
48

- 1 (v) prepares or causes to be prepared all reports to be provided to the partners or
2 lenders on a monthly, quarterly, or annual basis consistent with the
3 requirements of the limited partnership agreement;
4
5 (vi) coordinates all present and future development, construction, or rehabilitation
6 of low-income housing property that is the subject of the limited partnership
7 agreement;
8
9 (vii) monitors compliance with all government regulations and files or supervises
10 the filing of all required documents with government agencies;
11
12 (viii) acquires, holds, assigns or disposes of property or any interest in property;
13
14 (ix) borrows money on behalf of the limited partnership, encumbers limited
15 partnership assets, places title in the name of a nominee to obtain financing,
16 prepays in whole or in part, refinances, increases, modifies or extends any
17 obligation;
18
19 (x) pays organizational expenses incurred in the creation of the partnership and all
20 operational expenses; ~~and~~
21
22 (xi) determines the amount and timing of distributions to partners and establish
23 and maintain all required reserves; ~~and~~
24
25 (xii) ensures that charitable services or benefits, such as vocational training,
26 educational programs, childcare and after-school programs, cultural activities,
27 family counseling, transportation, meals, and linkages to health and/or social
28 services are provided or information regarding charitable services or benefits
29 are made available to the low-income housing tenants.
30

31 (b) The managing general partner must maintain records and documents evidencing the duties
32 performed by the managing general partner. Such records and documents may include, but
33 are not limited to:

- 34
35 (1) accounting books and records;
36 (2) tax returns;
37 (3) budgets and financial reports;
38 (4) reports required by lenders;
39 (5) documents related to the construction or rehabilitation of real property;
40 (6) legal documents such as contracts, deeds, notes, leases, and deeds of trust;
41 (7) documents related to complying with government regulations and filings;
42 (8) documents related to property inspections;
43 (9) documents related to charitable services or benefits provided or the information
44 provided regarding such services or benefits;
45 (10) reports prepared for the partners;
46 (11) bank account records;
47 (12) audited annual financial statement of the limited partnership; and
48 (13) property management agreement.

- 1
2 (c) Substitution of Managing General Partner. A limited partnership in which the managing
3 general partner is an eligible nonprofit corporation or an eligible limited liability company
4 that has qualified for the welfare exemption for low-income housing may allow a substitution
5 of its managing general partner by another eligible nonprofit corporation without affecting
6 the organizational qualification for the welfare exemption provided that:
7
8 (1) the limited partnership agreement authorizes the withdrawal or removal of the managing
9 general partner and the admission of a substitute managing general partner on the same
10 effective date and such admission of the substituting managing general partner into the
11 limited partnership is in compliance with the requirements of section 15641 of the
12 Corporations Code; and
13
14 (2) the substitute managing general partner meets all of the requirements of a managing
15 general partner set forth in subdivision (a)(6) above.
16
17 (d) Delegation of Authority Clause. If the limited partnership agreement contains a delegation of
18 authority clause, such clause must provide either that:
19
20 (1) the managing general partner may not delegate any of its substantial management duties
21 defined in (a)(10) above; or
22
23 (2) the managing general partner may delegate its substantial management duties, defined in
24 (a)(10) above, to persons who, under its supervision, may perform such duties for the
25 partnership subject to the supervision by the managing general partner. If the managing
26 general partner elects to delegate one or more of its substantial management duties, the
27 managing general partner must demonstrate that it is actually supervising the
28 performance of the delegated duties.
29
30 (e) Certification Requirements. The limited partnership must file for and receive a supplemental
31 clearance certificate from the Board as provided in Regulation 140.2.
32
33 (f) The provisions of this regulation shall apply prospectively to claims or applications for the
34 welfare exemption under Revenue and Taxation Code section 214 and supplemental
35 clearance certificates under Regulation 140.2, filed on or after the effective date of this
36 regulation. For supplemental clearance certificates issued prior to the effective date of this
37 regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with
38 this regulation unless the Board has issued a written notice of noncompliance. If the Board
39 has issued such notice, claimant shall have 90 days from the date of the notice to comply
40 with this regulation. Upon written request for an extension of time prior to the expiration of
41 the 90-day period to comply, the Board shall grant a reasonable amount of time to comply
42 with this regulation.

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 140.2 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140.2**
6 **REQUIREMENTS FOR SUPPLEMENTAL CLEARANCE CERTIFICATE**
7 **FOR LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**
8 **FOR LOW-INCOME HOUSING PROPERTIES**
9

- 10 (a) A limited partnership in which the managing general partner is an eligible nonprofit
11 corporation or eligible limited liability company, meeting the requirements of Regulation
12 140.1, that owns low-income housing property for which it will claim the welfare
13 exemption shall file with the State Board of Equalization an application for a
14 Supplemental Clearance Certificate for each low-income housing property. The form of
15 the application shall be prescribed by the State Board of Equalization.
16
- 17 (b) A Supplemental Clearance Certificate may be granted only if the managing general
18 partner has already been granted an Organizational Clearance Certificate by the State
19 Board of Equalization, as required under Revenue and Taxation Code section 254.6.
20
- 21 (c) In order to qualify for a Supplemental Clearance Certificate, the general partners of the
22 limited partnership, including the managing general partner, must certify under penalty of
23 perjury under the laws of the State of California, that:
- 24
- 25 (1) The acquisition, construction, rehabilitation, development, or operation of the
26 property, or any combination of these factors, is financed with low-income housing
27 tax credits or government financing, as defined in Regulation 140;
28
- 29 (2) There is an enforceable and verifiable regulatory agreement or recorded deed
30 restriction, as defined in Regulation 140, that restricts all or a portion of the property's
31 usage for rental to lower income households and the units designated for use by lower
32 income households are continuously available to or occupied by lower income
33 households at rents that do not exceed those prescribed by the terms of a regulatory
34 agreement or recorded deed restriction, as defined in Regulation 140 or to the extent
35 that none are provided in the regulatory agreement or recorded deed restriction, at
36 rents that do not exceed those prescribed by section 50053 of the Health and Safety
37 Code;
38
- 39 (3) Funds that would have been necessary to pay property taxes are used to maintain the
40 affordability of, or reduce rents otherwise necessary for, the units to be occupied by
41 lower income households;
42
- 43 (4) The managing general partner meets the requirements of Regulation 140.1; and
44
- 45 (5) All of the information provided as part of the application for the Supplemental
46 Clearance Certificate, including any accompanying statements or documents, is true,
47 correct, and complete to the best of the knowledge and belief of the person(s) signing
48 the application.

1 (d) The following information and documents shall be provided with the application for a
2 Supplemental Clearance Certificate:

- 3
- 4 (1) Legal name of the limited partnership;
- 5
- 6 (2) Legal name of the managing general partner of the limited partnership, its
7 corporate identification number and mailing address, and the date that it became
8 the managing general partner of the limited partnership;
- 9
- 10 (3) Name, title, telephone number, and e-mail address of person signing the
11 application for the Supplemental Clearance Certificate;
- 12
- 13 (4) The Organizational Clearance Certificate number and the date of issuance to the
14 managing general partner. If an Organizational Clearance Certificate has not been
15 issued to the managing general partner, an application for an Organizational
16 Clearance Certificate must be filed by the managing general partner;
- 17
- 18 (5) Complete address of the property for which the limited partnership is seeking the
19 welfare exemption, including the zip code, and the date the limited partnership
20 acquired the property;
- 21
- 22 (6) Fiscal year for which the application is made;
- 23
- 24 (7) List of any additions or deletions of general partners in the limited partnership, if
25 any, after its formation;
- 26
- 27 (8) Copy of Secretary of State form LP-1, Certificate of Limited Partnership, and, if
28 applicable, Secretary of State form LP-2, Amendment to Certificate of Limited
29 Partnership;
- 30
- 31 (9) Copy of the regulatory agreement with a public agency, or a copy of a recorded
32 deed restriction which verifies or evidences the receipt of low-income housing tax
33 credits or government financing, as defined in Regulation 140; and
- 34
- 35 (10) Copy of the grant deed or if the land is not owned by the limited partnership,
36 documents evidencing the limited partnership's ownership of the improvements.
- 37

38 (e) The limited partnership shall include a copy of the Supplemental Clearance Certificate
39 with its welfare exemption claim filed with the assessor of the county in which the
40 property is located.

41

42 (f) In the event that the general partner designated in the limited partnership agreement no
43 longer meets the definition of managing general partner, as defined in Regulation 140.1,
44 or the managing general partner withdraws from the partnership, the limited partnership
45 shall report such event to the State Board of Equalization and the assessor of the county
46 in which in property is located no later than the next succeeding annual filing deadline for
47 the welfare exemption claim.

1 **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**
2 **RULE 143 DOES NOT REFLECT OR REPRESENT THE POSITION**
3 **OF THE BOARD OR ANY BOARD MEMBER.**

4
5 **DRAFT OF PROPOSED PROPERTY TAX RULE 143**
6 **REQUIREMENTS FOR IRREVOCABLE DEDICATION CLAUSE**
7 **AND DISSOLUTION CLAUSE**
8 **FOR ORGANIZATIONAL CLEARANCE CERTIFICATE**
9 **FOR WELFARE EXEMPTION**

10
11 **(a) DEFINITIONS.** For the purposes of this regulation:

- 12
13 (1) “Dissolution clause” means a statement in the organizational documents of a
14 qualifying organization that upon the liquidation, dissolution, or abandonment of the
15 qualifying organization, the exempt property will not inure to the benefit of any private
16 person except another qualifying organization.
17
18 (2) “Irrevocable dedication clause” means a statement in the organizational documents of a
19 qualifying organization that the property is irrevocably dedicated exclusively to one or
20 more qualifying purposes.
21
22 (3) “Organizational document” means the articles of incorporation of a corporation, or the
23 bylaws, articles of association, constitution or regulations of a community chest, fund,
24 or foundation, or corporation chartered by an act of Congress.
25
26 (4) “Qualifying organization” means a community chest, fund, foundation, nonprofit
27 corporation, or eligible limited liability company, organized and operated exclusively
28 for religious, hospital, scientific, or charitable purposes. Charitable purposes include
29 educational purposes as defined in Revenue and Taxation Code section 214,
30 subdivision (j).
31
32 (5) “Qualifying purpose” means a religious, hospital, scientific or charitable purpose.
33 Charitable purposes include educational purpose as defined in Revenue and Taxation
34 Code section 214, subdivision (j).
35

36 **(b) IN GENERAL.** In order to qualify for the welfare exemption provided in Revenue and
37 Taxation Code section 214, among other requirements specified therein, the property owned by
38 a qualifying organization must be irrevocably dedicated exclusively to a qualifying purpose, and
39 upon the liquidation, dissolution, or abandonment of the qualifying organization, the property
40 will not inure to the benefit of any private person except another qualifying organization. In
41 order to satisfy these requirements, the organizational document of the qualifying organization
42 must contain both an irrevocable dedication clause, which meets the requirements set forth in
43 subdivision (c) below, and a dissolution clause, which meets the requirements set forth in
44 subdivision (d) below.
45

46 **(c) IRREVOCABLE DEDICATION CLAUSE.** Property is deemed to be irrevocably dedicated
47 exclusively to a qualifying purpose provided that a qualifying organization’s organizational

1 document contains a statement that irrevocably dedicates its property exclusively to a
2 qualifying purpose.

- 3
- 4 (1) If the organization's charitable purpose is educational purposes as defined in Revenue and
5 Taxation Code section 214, subdivision (j), the irrevocable dedication clause shall state that
6 the property is irrevocably dedicated to educational purposes as defined in section 214,
7 subdivision (j), or that the property is irrevocably dedicated to charitable and educational
8 purposes meeting the requirements of Revenue and Taxation Code section 214.
9
- 10 (2) If the irrevocable dedication clause states that the property is dedicated to purposes other
11 than the qualifying purposes, the property does not qualify for the welfare exemption.
12
- 13 (3) If the irrevocable dedication clause states that the property is irrevocably dedicated to a
14 "public" or "public benefit" purpose, the property does not qualify for the welfare
15 exemption.
16
- 17 (4) The following examples illustrate irrevocable dedication clauses as defined in subdivision
18 (a)(3) above:
19

20 Example No. 1: The property owned by this organization is irrevocably dedicated to
21 charitable, scientific, hospital, or religious purposes.
22

23 Example No. 2: The property owned by this organization is irrevocably dedicated to
24 charitable and educational purposes meeting the requirements of Revenue and Taxation
25 Code section 214.
26

27 Example No. 3: The property owned by this organization is irrevocably dedicated to
28 educational purposes as defined in Revenue and Taxation Code section 214, subdivision (j).
29

30 Example No. 4: The property located in California owned by this organization is irrevocably
31 dedicated to charitable, scientific, hospital, or religious purposes.
32

33 Example No. 5: The property owned by this organization is irrevocably dedicated to
34 charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.
35

36 Example No. 6: The property of this corporation is irrevocably dedicated to charitable
37 purposes and no part of the net income or assets of this corporation shall ever inure to the
38 benefit of any director, officer or member thereof or to the benefit of any private person.
39

40 **(d) DISSOLUTION CLAUSE.** In order to qualify for the welfare exemption, the qualifying
41 organization's organizational document must contain a dissolution clause, which specifically
42 states that its property will be distributed to another qualifying organization entity upon its
43 liquidation, dissolution, or abandonment.
44

- 45 (1) If the dissolution clause in the organizational document designates a specific organization to
46 receive the distribution, it must state and the designated organization must be a qualifying
47 organization that is organized and operated for a qualifying purpose.
48

1 (2) The dissolution clause of the qualifying organization may provide that, upon the liquidation,
2 dissolution, or abandonment of the qualifying organization, the property will inure to the
3 benefit of a governmental entity.
4

5 (3) The following examples illustrate dissolution clauses as defined in subdivision (a)(1) above:
6

7 Example No. 1: Upon the liquidation, dissolution or abandonment of this organization, its
8 assets, remaining after payment or provision of payment of all debts and liabilities of this
9 organization, shall be distributed to an organization organized and operated for a charitable,
10 scientific, hospital, or religious purpose meeting the requirements of Revenue and Taxation
11 Code section 214.
12

13 Example No. 2: Upon the liquidation, dissolution or abandonment of this organization, the
14 proceeds or assets related to property located in California, remaining after payment or
15 provision of payment of all debts and liabilities of this organization, shall be distributed to
16 an organization organized and operated for a charitable, scientific, hospital, or religious
17 purpose meeting the requirements of Revenue and Taxation Code section 214.
18

19 Example No. 3: Upon the liquidation, dissolution or abandonment of this organization, its
20 assets, remaining after payment or provision of payment of all debts and liabilities of this
21 organization, shall be distributed to an organization organized and operated exclusively for
22 charitable and educational purposes meeting the requirements of Revenue and Taxation
23 Code section 214.
24

25 Example No. 4: Example No. 4: Upon the liquidation, dissolution or abandonment of this
26 organization, its assets, remaining after payment or provision of payment of all debts and
27 liabilities of this organization, shall be distributed to an organization organized and operated
28 exclusively for educational purposes meeting the requirements of Revenue and Taxation
29 Code section 214, subdivision (j).
30

31 Example No. 5: Upon the dissolution or winding up of the corporation, its assets remaining
32 after payment, or provision for payment, of all debts and liabilities of this corporation shall
33 be distributed to a nonprofit fund, foundation or corporation which is organized and
34 operated exclusively for charitable purposes and which has established its tax exempt status
35 under section 501(c)(3) of the Internal Revenue Code.
36

37 Example No. 6: Upon the dissolution or winding up of the organization, its assets remaining
38 after payment or provision of payment of all debts and liabilities of this organization, shall
39 be distributed to a nonprofit organization which is organized and operated exclusively for
40 charitable purposes.
41

42 **(e) FAILURE TO MEET REQUIREMENTS.**
43

44 (1) If, at the time of filing, the applicant's organizational document does not contain an
45 irrevocable dedication clause and/or a dissolution clause which meets the requirements of
46 subdivisions (c) and (d), respectively, the organization does not qualify for the
47 Organizational Clearance Certificate under Revenue and Taxation Code section 254.6.
48 However, the applicant may be issued an Organizational Clearance Certificate for the fiscal

1 year for which the Organizational Clearance Certificate is requested on its application if the
2 applicant amends its organizational documents and submits a certified copy of the
3 amendment to the State Board of Equalization by the next succeeding lien date.
4

- 5 (2) If, at the time of filing, applicant's organizational documents did not contain an irrevocable
6 dedication clause and/or a dissolution clause which meets the requirements of subdivisions
7 (c) and (d), respectively, and the applicant amends its organizational documents after the
8 next succeeding lien date, an Organizational Clearance Certificate may be issued under
9 Revenue and Taxation Code section 254.6 for the fiscal year following the lien date by
10 which the applicant amends its organizational documents and submits a certified copy of the
11 amendment to the State Board of Equalization.
12
- 13 (3) If the applicant amends its articles of incorporation, the amended articles must be filed with
14 the Secretary of State's office and an endorsed copy must be provided to the State Board of
15 Equalization.
16
- 17 (4) The county assessor may not approve a welfare exemption claim until the State Board of
18 Equalization has issued an Organizational Clearance Certificate under Revenue and
19 Taxation Code section 254.6.
20
21



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DALE FLIPPIN
Nevada County

Conference

GARY HAZELTON
Santa Cruz County

*Past President

November 8, 2005

State Board of Equalization
Honorable John Chiang, Chair
450 N Street
Sacramento, CA 95814

RE: Proposed Welfare Exemption Rules 140, 140.1, 140.2 and 143

Dear Mr. Chiang:

As President of the California Assessors' Association (CAA), I am writing to urge your reconsideration and adoption of the proposed rules noted above, with one modification.

In June these proposed rules were discussed and tabled by the Board. Since that meeting, representatives of the CAA and the affordable housing community have been meeting in an effort come to some consensus on the language contained in the proposed rules.

I believe we have resolved all our major areas of disagreement except one. As a result, I would ask that you revisit these proposed rules at your December meeting.

The one remaining area of contention is contained in proposed rule 140.1 (a) (10). This section concerns the number of management duties necessary to be performed by the managing general partner. A large consortium of the affordable housing industry has suggested there should be a minimum number of four duties performed. However, the CAA believes that two of the designated duties are merely record keeping and, therefore, the appropriate minimum of designated duties for the managing general partner should be increased to five.

I strongly urge that the proposed rules be adopted with the suggested modification at your December meeting.

Sincerely,

R. Glenn Barnes
President, California Assessors' Association

- c. Members, State Board of Equalization
Dale Flippin, Chair, CAA Standards Committee



California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

November 15, 2005

Mr. Dean Kinnee, Chief
Assessment Policy and Standards Division
State Board of Equalization
P.O. Box 942879, MIC 64
Sacramento, CA 94279

Dear Mr. Kinnee:

On behalf of the California State Association of Counties (CSAC) and the League of California Cities, we write to express our support for changes to Proposed Rule 140 that work to enforce proper usage of the Welfare Property Tax Exemption for affordable housing and ensure that the benefit of the exemption remains with the residents.

We understand that Board of Equalization staff has been working with county assessors and affordable housing developers to develop language that establishes criteria by which managing general partners must meet in order to qualify for the exemption. We are supportive of the stricter 5/12 standard and language that provides appropriate guidance to assessors when evaluating applicants.

Cities and counties seek opportunities to provide affordable housing to their residents. However, the property tax exemption, as a taxpayer subsidy, must be utilized appropriately to serve those who need it most. This means that lower property taxes should result in lower rents for tenants. The Board of Equalization is obligated under Revenue and Taxation Code 214(g) to proffer regulations that meet that goal.

We appreciate your consideration of our position.

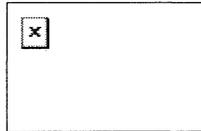
Sincerely,

Jean Kinney Hurst
Legislative Representative
California State Association of Counties

Jean Flournoy Korinke
Legislative Representative
League of California Cities

Hladek, Jeanne

I am writing to indicate my support of the latest BOE staff position on the subject rules. I have also attached a letter from the President of the Calif. Assessors' Association indicating our support. The vote of the Assessors' Executive Committee was unanimous in support, however, they did not see the latest staff position on 140.1 which added the yearly inspection by the managing general partner. However, I am sure the Association would support that language also, as I do.



Rick Auerbach

Los Angeles County Assessor
Voice: 213.974.3101 FAX: 213.617.1493
Website: lacountyassessor.com
Email: rauerbac@co.la.ca.us

Chung, Sophia

From: Larry Stone [larry.stone@asr.sccgov.org]
Sent: Friday, November 18, 2005 11:32 AM
To: Chung, Sophia
Subject: Welfare Exemption Rules

I write in support of proposed Welfare Exemption Rules 140, 140.1, 140.2 and 143.

With respect to Rule 140.1, I urge adoption of the amendments which include the following:

- A. The managing general partner actually performs five or more of the defined partnership duties;
- B. The managing general partner conducts an annual physical inspection of the low-income property;
- C. The managing general partner annually certifies that the property meets all of the requirements of Rule 140;
- D. That charitable services, as defined, are available to the tenants.

Lawrence E. Stone
Assessor
Santa Clara County
(408) 299-5588
Fax: (408) 297-9526

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Chung, Sophia

From: Cathy Colt [COLT@co.riverside.ca.us]
Sent: Wednesday, November 16, 2005 6:25 PM
To: Chung, Sophia
Cc: bbossche@co.la.ca.us; rauerbac@co.la.ca.us; Larry Ward
Subject: Draft Rule 140.1 - Welfare Exemption for Low Income Housing

Dear Ms. Chung:

Because of the late date I am taking the liberty of using email to express Riverside County Assessor-Clerk-Recorder's support of the recently issued draft Rule 140.1. We have been involved in the public hearing process and feel this revised rule is one which both sides of the issue can and should support. In all but this type of property - low income housing - the welfare exemption from property taxes prohibits any participation by a for-profit entity. Therefore it is reasonable to expect the non-profit partner to perform the tasks listed. As a gift of public funds it is not too much to ask the non-profit entity that enables this economic benefit to work for that benefit.

I remain ready to answer any questions you may have.

Sincerely,

Cathy Colt
Assistant Assessor-Clerk-Recorder
Riverside County
(951) 486-7444
(951) 486-7440 FAX
colt@co.riverside.ca.us

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November 21, 2005

VIA E-MAIL
VIA FEDERAL EXPRESS

Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chair
Ms. Betty T. Yee, Acting Member
Honorable Bill Leonard
Honorable Steve Westly
State Board of Equalization
450 N Street
Sacramento, California 95814

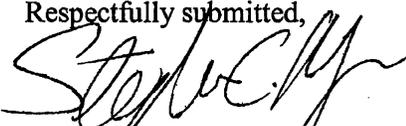
Re: Staff's Notice regarding Proposed Rule 140.1

Dear Honorable Members:

On behalf of the coalition of affordable housing developers, lenders, and investors referenced below, we are writing concerning Staff's Notice dated November 8, 2005 concerning Proposed Rule 140.1 and the consideration of said rule by the Board of Equalization on December 13, 2005.

In our "sign on" letter to you of October 4, 2005, this coalition offered a compromise solution to the adoption of Proposed Rule 140.1 that focused on a "4 out of 12" standard. Staff's proposal in its November 8th Notice has suggested a "5 out of 12" standard. Our coalition continues to believe that the interests of California's affordable housing community are best served by bringing closure to this year-long process. Accordingly, the following coalition participants support Staff's suggested version of Proposed Rule 140.1 in its entirety as expressed in Staff's November 8th Notice.

We understand that California's assessors also favor Staff's proposal. We hope that the support of the assessors and of our coalition, whose members have a hand in virtually all of California's affordable housing production, will lead to adoption of the Proposed Rules as Staff has most recently suggested.

Respectfully submitted,

Stephen C. Ryan, Esq. on behalf of the
following coalition members

Honorable John Chiang, Chair, et al.
November 21, 2005
Page 2

(alphabetically)

AEGON USA Realty Advisors Inc.
505 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: David Kunhardt, Senior Vice President, Community Investments

Affordable Housing Associates, LLC
450 Newport Center Drive, Suite 595
Newport Beach, California 92660
Attention: Gary Grant, Member

Alliant Capital
21600 Oxnard Street, Suite 1200
Woodlands Hills, California 91367
Attention: Jason A. Hobson, Senior Counsel & Vice President

American Property Financing, Inc.
200 First Avenue West, Suite 201
Seattle, Washington 98119
Attention: Jay Helfrich, Executive Vice President

The Amerland Group
1005 Solymar Drive
La Jolla, California 92037
Attention: Ruben Islas, Managing Member

AOF/Pacific Affordable Housing Corp.
7777 Center Avenue, Suite 240
Huntington Beach, California 92647
Attention: Raman R. Nayar, President

ARCS Commercial Mortgage
26901 Agoura Road, Suite 200
Calabasas Hills, California 91301-5109
Attention: Keeley Kirkendall, Executive Vice President

Barker Management Incorporated
1101 East Oranewood Avenue
Anaheim, California 92805
Attention: Peter Barker, President

Honorable John Chiang, Chair, et al.
November 21, 2005
Page 3

California Community Reinvestment Corporation
225 W. Broadway, Suite 120
Glendale, California 91204
Attention: Mary F. Kaiser, President

Casa Major, Inc.
17060 San Bruno Street, Suite F-3
Fountain Valley, California 92708
Attention: Robert Graham, Executive Director

CharterMac/Related Capital Company
18201 Von Karman Avenue, Suite 900
Irvine, California 92612
Attention: Ronne Thielen, Executive Vice President

Collateral Mortgage Capital
15775 North Dallas Parkway, Suite 250, LB 38
Dallas, Texas 75248
Attention: Philip A. Melton, Director of Affordable Housing

Community Housing Assistance Program, Inc.
3743 E. Casselle Avenue
Orange, California 92869-3147
Attention: Kenneth S. Robertson, Chief Executive Officer

The Core Companies
470 South Market Street
San Jose, California 95113
Attention: David Neale, President

Cox Castle Nicholson LLP
555 Montgomery Street, Fifteenth Floor
San Francisco, California 94111-2585
Attention: Stephen C. Ryan, Esq., Partner

East-West Bank
475 Huntington Drive
San Marino, California 91108
Attention: Deborah Beveridge, Senior Vice President

EHC Lifebuilders
2665 North First Street, Suite 210
San Jose, California 95113
Attention: Ky G. Le, Director

Honorable John Chiang, Chair, et al.
November 21, 2005
Page 4

Foundation for Affordable Housing
30950 Rancho Viejo Road, Suite 100
San Juan Capistrano, California 92675
Attention: Deborrah Willard

Foundation for Social Resources, Inc.
4029 Westerly Place, Suite 101
Newport Beach, California 92660
Attention: Jonathan B. Webb, Executive Director

Global Premier Development, Inc.
1012 Brioso Drive, Suite 202
Costa Mesa, California 92627
Attention: Andrew Hanna, President

GMAC Commercial Holding Capital Corp.
145 Willow Street, Suite 210
Bonita, California 91912
Attention: Hal Kuykendall, Executive Vice President

Green Park Financial
220 Montgomery Street, Suite 1087
San Francisco, California 94104
Attention: Elizabeth C. Diamond, Vice President

Hampstead Partners, Inc.
1205 Prospect Street, Suite 450
La Jolla, California 92037
Attention: Chris Foster, President

Hearthstone Housing Foundation
5031 Birch Street, Suite F
Newport Beach, California 92660
Attention: Coco Vasquez, Executive Director

Hutchinson, Shockey, Erley & Co.
2020 Cordero Road
Delmar, California 92014
Attention: Lauro Garcia III, Managing Member

Jeremiah Society
3402 East Dixon Avenue
Orange, California 92869
Attention: Roy Kaufman, Executive Director

Honorable John Chiang, Chair, et al.
November 21, 2005
Page 5

The John Stewart Company
1388 Sutter Street, 11th Floor
San Francisco, California 94109
Attention: Jack D. Gardner, President and Chief Executive Officer

Johnson Capital
18101 Von Karman Avenue Suite 1050
Irvine, California 92612
Attention: S. Amos Smith, Senior Vice President

KDF Communities LLC
1301 Dove Street, Suite 720
Newport Beach, California 92660
Attention: Mark Hyatt, Managing Member

Klein Financial Corporation
550 S. California Avenue, Suite 330
Palo Alto, California 94306
Attention: Terry Freeman, National Director of Affordable Housing Finance

Las Palmas Housing
531 Encinitas Boulevard, Suite 206
Encinitas, California 92024
Attention: Joseph M. Michaels, President

Mercantile Capital Corporation
251 Lafayette Circle, Suite 260
Lafayette, California 94549
Attention: James J. Keefe, President

Meta Housing Corporation
1516 Pontius Avenue, Suite 202
Los Angeles, California 90025
Attention: John M. Huskey, President

MMA Financial, LLC
44 Montgomery Street, Suite 1710
San Francisco, California 94104
Attention: Catherine Talbot, Executive Vice President

Northbay Family Homes
14 Commercial Boulevard, Suite 133
Novato, California 94949-6110
Attention: Clark Blasdel, President

Honorable John Chiang, Chair, et al.
November 21, 2005
Page 6

Oakmont Senior Living LLC
220 Concourse Blvd.
Santa Rosa, California 95403
Attention: Joseph G. Lin, Chief Financial Officer

Pacific Housing, Inc.
730 Alhambra Boulevard, Suite 310
Sacramento, California 95816
Attention: Mark Wiese, President

Pacific West Companies
7025 Longley Lane, Suite 60
Reno, Nevada 89511
Attention: Dane Hillyard, Principal

PNC MultiFamily Capital
12753 Aspen Court
Poway, California 92604
Attention: Richard K. Shea, Vice President, Acquisitions

Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, California 94105-2228
Attention: Gary P. Downs, Esq., Partner

Project Access, Inc.
4029 Westerly Place, Suite 113
Newport Beach, California 92660
Attention: Lane Macy, Executive Director

Project Go, Inc.
801 Vernon Street
Roseville, California 95678
Attention: Lynda Timbers, Executive Director

Related Companies of California
18201 Von Karman Avenue, Suite 900
Irvine, California 92612
Attention: William Witte, President

RHC Communities
17541 17th Street
Tustin, California 92780
Attention: David E. Rose, Chief Operating Officer

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M. E. Shay & Co.
1001 6th Street, Suite 501
Sacramento, California 95814
Attention: Mary Ellen Shay, President

Simpson Housing Solutions, LLC
320 Golden Shore, Suite 200
Long Beach, California 90802
Attention: Michael Costa, President

St. Anton Partners, LLC
1801 I Street, Suite 202
Sacramento, California 95814
Attention: Steven L. Eggert, Managing Member

The Steadfast Companies
4343 Von Karman Avenue
Newport Beach, California 92660
Attention: Ana Marie del Rio, Esq., Chief Administrative Officer/General
Counsel

SunAmerica Affordable Housing Partners, Inc.
1999 Avenue of the Stars, 36th floor
Los Angeles, California 90067
Attention: Howard Heitner, Esq., Executive Vice President

Sunrise Partners
7600 N. Ingram, Suite 131
Fresno, California 93711-5824
Attention: Tom B. Balch, Managing Partner

USA Properties Fund, Inc.
2440 Professional Drive
Roseville, California 95661
Attention: Geoff Brown, President

US Bank
980 9th Street, Suite 1100
Sacramento, California 95814
Attention: Jennifer A. Barnes, Vice President, CRE/Community Lending

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Wakeland Housing and Development Corporation
625 Broadway, Suite 100
San Diego, California 92101
Attention: Kenneth L. Sauder, President

WNC & Associates, Inc.
17782 Sky Park Circle
Irvine, California 92614
Attention: David Shafer, Ex. Vice President

cc: Ms. Kristine Cazadd, Chief Counsel, Legal Department
Mr. Dean Kinnee
Ms. Selvi Stanislaus
Ms. Sophia Chung

Chung, Sophia

From: Michael Stein [mstein@mmsteininc.com]
Sent: Friday, November 11, 2005 9:02 AM
To: Chung, Sophia
Cc: Thompson, Lisa
Subject: Proposed welfare exemption rules

Ms. Chung:

I received the proposed revisions to Welfare Rule 140.1. I wish to state that I strongly support the diligent and persistent efforts of the BOE staff to bring fairness and certainty to the low-income housing property tax exemption. I urge the Board to approve the Rules for formal adoption proceedings at the December 13, 2005 meeting. While you have received many comments urging the importance of uniform rules and clarity of compliance requirements in order for this exemption to be effective, one group has not been heard from nor had their views solicited by the people who have appeared at the hearings. These are the low income residents of California who are the intended beneficiaries of the legislation. If they were given a voice here they would support your continuing efforts to bring these Rules to prompt adoption. Given the intensity with which some people have staked out their positions on Rule 140.1, you are certainly to be commended for your efforts.

Mike

Michael M. Stein, Esq.
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Chung, Sophia

From: Kunhardt, David [David.Kunhardt@aegonusa.com]
Sent: Tuesday, November 08, 2005 5:28 PM
To: Chung, Sophia
Cc: Stanislaus, Selvi; Kinnee, Dean; Thompson, Lisa; Ford, Ladeena
Subject: RE: Proposed Rule 140.1 - Welfare Exemption Rule for Low-Income Housing

Sophia,

Thank you very much for your follow-through. I appreciate that you remembered my letter of last June, which recommended something very close to the current staff position on this matter. The site visit additions by staff are entirely appropriate.

I think you and the staff have done an excellent job, and am personally in support of every word of your new recommendation to the BOE.

Please let me know if there is anything that you may require. Again, thank you for your kind consideration.

David W. Kunhardt
Senior V. P. - Community Investments
AEGON USA Realty Advisors, Inc.
505 Sansome Street, #1700
San Francisco, CA 94111
Tel: 415-983-5418
Fax: 415-983-5558
David.Kunhardt@aegonusa.com
Respect People, Make Money, Have Fun

-----Original Message-----

From: Chung, Sophia [mailto:Sophia.Chung@boe.ca.gov]
Sent: Monday, November 07, 2005 11:19 AM
To: Kunhardt, David
Cc: Stanislaus, Selvi; Kinnee, Dean; Thompson, Lisa; Ford, Ladeena
Subject: FW: Proposed Rule 140.1 - Welfare Exemption Rule for Low-Income Housing

This is a follow-up to the voicemail I left for you this morning.

Please find attached for your review and comment, staff's proposed revised Rule 140.1. I have also attached a brief summary of the proposed revisions.

Thank you.

Chung, Sophia

From: Greg Langer [glanger@rpab.com]
Sent: Thursday, November 17, 2005 5:22 PM
To: Chung, Sophia
Cc: Stoughton, Peter (Los Angeles)
Subject: BOE Proposed Rule 140.1

Hi Sophia,

Please be advised that despite serious reservations, I am, nevertheless, in support of the proposed revisions to the rule as they are written. My reservations are based upon the belief that increasing the number of required management duties from two to five (out of 12) is excessive and will add a significant layer of unnecessary, burdensome administrative actions to the management of affordable housing. As we discussed, this is a dramatic change from the prior rule that required a managing general partner to perform two of out 19 duties.

The reason for my change of heart is due to the greater goal of ending the uncertainty generated by this rulemaking process.

Let me say again, on behalf of myself and all of those involved in this process, that you have been simply fantastic during this entire process. Your professionalism, intellect and wonderful demeanor made it a total pleasure to work with you. Thank you.

Greg

tel: 310-788-7545

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Chung, Sophia

From: Rick Taylor [rick@aging.org]
Sent: Tuesday, November 15, 2005 4:02 PM
To: Chung, Sophia
Subject: FW: Welfare Exemption for Low-Income Housing Properties...

Sophia:

The following is an excerpt from a response from one of our members on the proposed revision to Rule 140.1. I am not sure if they have submitted this to you directly, but I wanted to go ahead and do so just to be safe. Thanks for the opportunity.

Under the definition of Managing General Partner (MGP) in Section (a) (6), _____ or an affiliated nonprofit owner would meet the definition. Section (a)(7) provides that while the MGP may delegate management of the limited partnership under section (7)(iii) provided it supervise management (and, according to (10) (d) demonstrate it is actually supervising the agent) , the balance of (7) sets forth separate affirmative obligations of the MGP and does not state these are delegable. This would include performing "substantial management duties", annual physical inspections to ensure low income status, and certification to county assessor. Is the MGP performing these roles now or are they delegated? The draft is less than clear.

The Delegation of Authority Clause (10)(d) provides that the MGP may delegate its management duties under (a)(10) but does not comment on the responsibilities under (a)(7).

Perhaps some language can be added that those responsibilities under (a)(7) not clearly delegable in the present draft may be delegated to the managing agent under the conditions set forth in (10) (d).

Rick Taylor

Associate Director, Housing

**California Association of Homes
and Services for the Aging (CAHSA)**

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NOVEMBER 14, 2005

Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chair
Ms. Betty T. Yee, Acting Member
Honorable Bill Leonard
Honorable Steve Westly

State Board of Equalization
450 N. Street,
P.O. Box 942879
Sacramento, California 994279

RE: Rule Making Project
Revenue & Taxation Code § 214(g)

Dear Chairman Chiang and Honorable Members:

At the June 30, 2005 Board meeting, with the exception of Rule 140.1(a)(10), (the duties of the managing general partner), there were few, if any comments as to the other proposed Revenue and Taxation Section 214(g) rules and it was clear that if the Board had acted to approve, all proposed rules other than 140.1 would have easily been adopted. Therefore, especially in light of Board Staff's rather hurried letter of November 8, requesting comments by November 15, ¹the discussion below concentrates on the debate over the proposed duties of the managing general partner. (Rule 140.1(a)(10))

¹ I did not receive timely receive Staff's November 8 letter due to an error in my e-mail address, not actually receiving a copy of it until Friday, November 11, 2005.

Let me also say that we welcome the opportunity to address you regarding these issues and thank you for your concern in resolving the apparent conflict between different factions of the public interested in this exemption. While our primary client in this matter is the California Council For Affordable Housing, a nonprofit corporation, our office has assisted in the production of over 12,000 low income housing units over the past 20 or so years constructed by pure nonprofit entities as well as the more common combined nonprofit—for profit entities which this statutory exemption was intended to address.

The level of detail and supporting information included in this letter is relatively high, but the intent is to demonstrate that the focus of Revenue and Taxation Code Section 214(g) is not the specific duties of the managing general partner, but nevertheless, there has been a great deal of attention paid to this “duties” subject matter by the Board Staff, especially over the past five years. This letter is also intended to demonstrate that Board Staff has performed detailed legal research and incorporated the available legal guidance into the current system of “self-certification” by the managing general partner via BOE Forms 267-L-1 and 267-L-2.

Pure Nonprofit General Partner vs Mixed General Partners

From the written comments received by Board Staff and the public comments, I’m sure it is readily apparent to the Board members that there are two major factions of the interested public; i.e., the “pure nonprofits”² along with their allies,

² The term “pure nonprofit” is used to indicate certain of the large nonprofit entities who have expressed the view that (a) a nonprofit is not “legitimate” unless it has a large number of employees (for example 250 employees as mentioned by one large nonprofit at one of the Interested Parties hearings), (b) the nonprofit’s direct employees act as both the developer and the actual “management company” for the low income apartment project, including such duties as maintaining the grounds and landscaping and collecting the rents, and (c) such “pure” nonprofits are often the *only general partner* in the limited partnership. It is believed that in reality, none of these entities is truly “pure” meaning although in some limited partnerships a nonprofit may be the only general partner (thus be the *managing general partner* by default), the exemption is clearly intended for entities such as *limited partnerships*, and most of the limited partnerships have *for profit* limited partner investors who/ which own approximately 99.0% interest in the limited partnership, therefore there is nothing “pure” about such an entity

including several county assessors and the “mixed general partner limited partnerships”, along with their supporters including some of the largest lenders and syndicators (investors) in the United States.

It seems the pure nonprofits and related supporters’ collective desire (with respect to the issue of the “managing general partner” definition), is to insist on the managing general partner of the *partnership* in effect transforming itself into the *management company* for the actual apartment buildings in all cases.³ This desire is not only illogical for the majority of the qualifying limited partnerships in California, it is clearly not required by the controlling statute, nor has the Board Staff felt this approach was required as evidenced by the numerous citations to the Assessor’s Handbook, the BOE forms and explanatory letters from BOE Staff regarding this exemption. The pure nonprofits and allied assessors would have the Board vote to mandate that Rule 140.1 require each applicant to comply with every “duty” expressed in the current version of the statute. This is not only unreasonable for most nonprofits in California, it flies in the face of Board Staff’s guidance over the past five to ten years.

Public Rationale(s) For Pure Nonprofit Position

Alleged Abusers

The public rationale expressed by the pure nonprofit group for their suggested changes in managing general partner duties is their fear of “abuse of the system” by an (as yet) un-defined, un-identified group of alleged “abusers”. These allegations of “abuse” cannot be underscored enough, as my inquiries of Staff indicate that there is currently *one audit* in progress and are *no other applicants* on any list of suspected “abusers” of the exemption application process. If there were a serious abuse problem, one would imagine there would be numerous nonprofits or other applicants in a queue, waiting for their audits to commence. The lack of any

when viewed from the standpoint of the low income apartments being entirely owned and operated by a “pure nonprofit” entity.

³ It is clear the Board’s Staff has understood for years that the managing general partner is the manager of the *partnership* and not the *property*. [see March 21, 2000 letter from Richard C. Johnson, Deputy Director, Property Taxes Department, State Board of Equalization]