

Re: Requirements for 40 B Project Eligibility Letter: (Subject Project)

Dear

Thank you for requesting that MHP issue a Project Eligibility Letter (PEL) on your behalf for the subject 40B project (the "Project"). In issuing a PEL, MHP will perform the function of the "Subsidizing Agency" for the Project.

This letter tells you what you need to know in order to understand the PEL application process and MHP's policies in observance of state regulatory requirements, as outlined in the updates to 40B Regulations that became effective on February 22, 2008 (760 CMR 56), as well as Guidelines published in furtherance of these Regulations by the Massachusetts Department of Housing and Community Development (DHCD).

After initial inquiries regarding your Project are complete, we will invite your formal application for a PEL, along with the payment of certain fees outlined on ***Attachment 1***.

If and when you do submit an application to MHP, State regulations require you to submit a copy of your application to the Chief Executive Officer (mayor or chair of board of selectmen) of the city or town in which the Project is to be located, and to provide notice to DHCD of your PEL application.

Also enclosed is MHP's Limited Dividend Policy, dated September, 2013, which applies to all PEL applicants which are "Limited Dividend Organizations" (LDOs), as opposed to a non-profit or a public agency. I understand you are applying as an LDO for this project.

Below is a brief description of the process for obtaining a PEL, followed by other key topics to keep in mind as you proceed.

PEL Process:

Below is described the PEL application and issuance process.

There are two phases in the application process for a PEL: Phase I is related to MHP's issuance of the 30-Day Notice to the Town/City, and Phase II is related to MHP's issuance of the PEL.

Phase I: Thirty Day Notice to the Town

MHP is required under 40B regulations to provide a 30-day notice ("30-Day Notice") to the "Chief Executive Officer" of the Town/City where the project is located, at least 30 days prior to issuance of a PEL. (The Chief Executive Officer is defined as the mayor, for cities, or the board of selectmen, for towns.) In order for us to decide on the issuance of the 30-Day Notice, we need you to do the following:

- submit to us a complete MHP PEL application, as instructed above, including a complete PEL Information Form, which we will send you when we invite your formal application;
- provide a copy of your full PEL application, including the completed PEL Information Form, and any attachments to it, to the Chief Executive Officer of the Town/City;
- provide written notice of your application, to the Undersecretary of the Department of Housing and Community Development (DHCD), 100 Cambridge Street, Suite 300, Boston, MA 02114, and
- provide MHP with a copy of the written notice to DHCD .

When you have completed these items, MHP will review the submitted materials and determine if your PEL application is complete. If it is, MHP will visit the site, and make a determination as to whether we are prepared to send a 30-Day Notice to the Town/City. You should understand that, regarding the site visit, we are required to provide notice of the site visit to the Town/City's Chief Executive Officer in order to allow any officials or staff of the municipality to accompany us on the site visit, at their choice.

We require that the fees owed to MHP in connection with your PEL application (see **Attachment 1**) all be paid prior to issuance of the 30-Day Notice.

Should we elect to issue the 30- Day Notice, this will trigger a 30-day period during which the Town/City may make comments to us which we will take into consideration during our due diligence review. We cannot proceed with approval and issuance of the PEL itself until this 30-day comment period is complete.

Phase 2: Project Eligibility Letter

After the 30-day comment period has lapsed, we will make a determination as to whether or not we will issue the PEL. During this phase, we will review the Project for the following criteria:

1. that the proposed Project appears generally eligible under an MHP housing finance program;
2. that the proposed Project is generally appropriate for residential development, taking into consideration information provided by the municipality or other parties regarding municipal actions previously taken to meet affordable housing needs;
3. that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual

site plan and building massing, topography, environmental resources, and integration into existing development patterns;

4. that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rental information);
5. that the pro forma shows costs, including land valuation, consistent with DHCD guidelines, and the Project appears financially feasible and consistent with the DHCD guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;
6. that the Sponsor applying for the PEL is a public agency, a non profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the MHP housing finance program; and
7. that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

In issuing the PEL, which will require the Applicant's payment of the second half of the Processing Fee, we will provide copies of our PEL to DHCD, the Chief Elected Official of the municipality, and the local Zoning Board of Appeals.

While the PEL is not a commitment to lend and should not be interpreted as such, if you do obtain financing from MHP the Processing Fee related to the PEL will be credited toward MHP's commitment fee.

Other Important Topics

Below are highlighted key elements of MHP policies related to 40B projects to keep in mind related to your application with MHP for a PEL:

Appraisal

Please understand that state regulations under 40B require a Subsidizing Agency to establish the "as-is" value of the real estate parcel where the Project is to be located – that is, the value of the parcel prior to its being permitting under 40B and developed. Prior to issuance of a PEL, therefore, we will need to conduct an appraisal, at your expense, of the pre-permitting value of the property you are seeking to develop. We cannot accept an appraisal of this value if you have already engaged one because regulations require we as subsidizing agency to be the party which engages the appraisal. Since appraisals can take as much as six weeks to complete, I encourage you to authorize MHP to engage an appraisal as soon as possible.

Please note that if the project is 20 units or less in size, MHP may waive this requirement if the Applicant provides a written request by the Chief Elected Official of the town or city in which the

project is located. In substitution for the as-is appraisal MHP would require documentation supporting the acquisition cost; such documentation may be in the form of either a local tax assessment, a limited appraisal, or an opinion of value from a licensed real estate broker.

Substantial Changes to the Project

After the issuance of the PEL, if an Applicant seeks to change aspects of the project that vary from the project's characteristics in place when the PEL was issued, MHP will require the Applicant to notify MHP in writing of such changes, with a copy to the Chief Elected Official of the municipality, and the Zoning Board of Appeals. MHP shall determine within 15 days whether or not the changes are substantial with reference to the project eligibility requirements.

Final Approval by the Subsidizing Agency

State regulations require that the Subsidizing Agency issue a Final Approval Letter prior to the Town/City's issuance of a building permit. The purpose of this Final Approval Letter is to confirm that the Project's characteristics have not substantially changed since the issuance of the PEL. Under state regulations, we must issue you a formally approved commitment for permanent financing in order to issue the Final Approval Letter, and this commitment must be accepted by your for financing. Therefore, please notify us of your intention to obtain a Final Approval Letter at least 90 days prior to your intended date for building permit issuance, so that we have time both to underwrite and obtain approval for the permanent loan, and to prepare the Final Approval Letter.

Affirmative Fair Housing Marketing Plan (Including Resident Selection)

As part of its review of the PEL, MHP will require evidence that the Sponsor or the Development Team demonstrate capacity to meet fair housing requirements – that is, that they have the capacity to prepare and implement an adequate Affirmative Fair Housing Marketing Plan (AFHMP), to engage in marketing and outreach activities, and to conduct resident selection procedures that ensure the Property is marketed in keeping with fair housing requirements. In addition, we will require submission to us, and approval of, the AFHMP, before the sponsor begins the process of marketing the project.

Limited Dividend Policy

Please be aware that, if you are a Limited Dividend Organization (LDO), MHP has a Limited Dividend Policy which applies. The Policy includes, among other items, three important features:

1. *a limit on the annual cash* a developer can take out of a project's annual net cash flow to 10% of recognized borrower equity;
2. *a limit on developer fee* to a figure reflecting a reasonable return under a formula shown in the Limited Dividend Policy; in order to calculate this formula you will need to complete a cost certification at your expense (see next paragraph) and submit it to MHP within 90 days of substantial completion and prior to MHP's permanent loan closing;
3. *a restriction on land value* used in the calculations of items #1 and #2 above, such that the land value used must be the "as-is value" of the land – that is, the value of the land prior to the issuance of a comprehensive permit under Chapter 40B. This value will be determined by an appraisal engaged by MHP, as mentioned earlier in this letter.

Cost Certification

Within 90 days of completion and occupancy, and prior to permanent loan closing with MHP, Sponsors will be required to provide MHP with an audited cost certification for the Project, which MHP will review for compliance of the completed project with DHCD guidelines, regarding development fee, related party payments (if any), and calculation of sponsor equity.

The cost certification must be performed by a qualified certified public accounting firm which has been prequalified with DHCD for performing cost certifications. Please see **Attachment 2** for the requirements for CPA prequalification.

MHP will review the cost certification and, if approved, notify the Town/City of its approval and provide the Town/City with a copy of the cost certification. The Town/City will have 10 business days to identify any potential inaccuracies to MHP, before the cost certification can be deemed accepted. An accepted cost certification will be a condition of permanent loan closing.

Limited Dividend Organizations must provide financial surety to ensure completion of the cost examination. The surety shall be provided no later than the closing of the construction loan, through a letter of credit, bond, or cash, in a form satisfactory to MHP. The amount of the surety shall be as follows:

For projects

up to and including 25 units:	\$ 25,000
up to and including 50 units:	\$ 50,000
up to and including 100 units:	\$ 75,000
more than 100 units:	\$ 100,000

Inclusion of 3-BR Units

In January 2014 the State established a new requirement that for any 40B development, or other housing development using state resources, at least 10% of the units must have three BRs, unless they are SRO's or age-restricted. I will discuss this further with you prior to your submission of your PEL application.

I look forward to talking with you more about your PEL application. Thank you for contacting us about your affordable housing development plans, and do not hesitate to call me at (617) 330-9944 xXXX if you have any questions.

Sincerely,

cc: Attachment 1: Schedule of PEL Fees
Attachment 2: Procedures for Prequalification of Certified Public Accounts
Attachment 3: MHP's Limited Dividend Policy

Attachment 1

MHP's Fees for a Project Eligibility Letter (PEL)

MHP charges fees in connection with the issuance of a PEL, as follows:

- a Processing Fee totaling \$1,500 for non-profits or \$2,000 for for-profits;
- a 40B Fund Fee (not earned by MHP, but deposited into a fund helping to defray the costs of the 40B Housing Appeals Committee at DHCD), consisting of:
 - \$1,000 for non-profits, or \$2,500 for for-profits, *plus*:
 - an amount equal to \$30 per unit (counting all the units in the project)

Of these amounts, one-half of the Processing Fee (\$750 for non-profits or \$1,000 for for-profits), and the entire 40B Fund Fee must be paid upon application and prior to the issuance of the 30-Day Notice. The balance of the Processing Fee is due prior to our issuance of the PEL.

The 40B Fund Fee will be refunded if MHP declines to issue a PEL. MHP's Processing Fee is nonrefundable, but will be credited against the loan commitment fee which MHP charges should MHP be the permanent lender on the project.

Attachment 2

Procedures for Prequalification of Certified Public Accountants

DHCD requires the prequalification of certified public accountants (CPAs) hired by a Developer to carry out cost certifications in connection with Comprehensive Permit projects. In order to be prequalified by DHCD, CPAs must:

- Be licensed by, and in good standing with, the Commonwealth of Massachusetts Board of Public Accountancy;
- Meet the independence standards of the AICPA (American Institute of Certified Public Accountants);
- Have been subjected to a quality control (peer) review, within the most recent time period as required by the AICPA and received an unqualified report; and
- Have current insurance policies that cover errors and omissions.

CPAs interested in being prequalified by DHCD should submit the following information to DHCD, to the attention of Candace Tempesta, Contract Specialist, Massachusetts Department of Housing and Community Development, 100 Cambridge Street, Suite 300, Boston MA 02114 candy.tempesta@ocd.state.ma.us; 617-573-1507):

- A Letter of Interest providing the name, firm name (if applicable), address, telephone and fax numbers, and license number for the CPA;
- An original Certificate of Good Standing issued by the Massachusetts Division of Licensure within thirty (30) days of the submission to DHCD; and
- A copy of the relevant quality control (peer review) report.

Prequalification by DHCD will be good for a period of two (2) years from the date that DHCD notifies a CPA that it has met the standards set forth below, provided that the CPA maintains compliance with such standards.

Note: To access the up-to-date listing of the DHCD pre-qualified CPAs go to the following web site address: www.mass.gov/ehed/docs/dhcd/legal/cpaprequalifiedlist.doc.