TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

John H. Reagan Building
JHR 140
105 W. 15th Street
Austin, Texas

July 25, 2019
8:10 a.m.

MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESÉNDIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

DAVID CERVANTES, Acting Director

I N D E X

19020 Riva Keene Keene
19024 Morning Star Apartments Wharton
19026 National Church Residences-Robinson Robinson
19028 Casitas Lantana Brownsville
19030 Freedom's Path at Kerrville II Kerrville
19039 Blue Oaks San Antonio
19040 Vista East Houston
19047 Parkway Meadows Houston
19051 Casa de Manana Apartments Corpus Christi
19052 SilverLeaf at Tool Tool
19053 Foundation Village Austin
19057 SilverLeaf at Chandler III Chandler
19058 Country Terrace Apartments Highlands
19062 Residences at Thousand Oaks San Antonio
19063 Residences at Lake Waco Waco
19064 4242 Jackson Apartments McAllen
19070 South Rice Apartments Houston
19073 Gala at Central Park Hurst
19074 900 Winston Houston
19076 Bellfort Park Apartments Houston
19077 Telephone Road Elderly Houston
19078 Provision at Patriot Place Hurst
19079 Provision at Patriot Parkway Venus
19085 Gala at MacGregor Houston
19086 Trinity Place Apartments Round Rock
19087 Sonora Seniors Apartments Sonora
19088 Metro Tower Lofts Lubbock
19094 Laurel Vista Beaumont
19100 Carver Ridge Apartments Midland
19102 Ranch Court Apartments Dripping Springs
19107 City View at Hyde Park Austin
19109 Verdin Square Houston
19111 Colorado City Seniors Apartments Colorado City
19112 Hebbronville Apartments Hebbronville (CDP)
19113 Livingston Seniors Apartments Livingston
19114 Sunset Vista Seniors El Paso
19116 Amber Ridge Apartments Angleton
19117 Ridgestone Estates El Paso
19120 Villas at Augusta El Paso
19124 Maple Street Lofts Abilene
19126 3104 Division Lofts Arlington
19132 Village at Boyer San Antonio
19133 Alazan Lofts San Antonio
19134 Village at Nogalitos San Antonio

19136 Luna Flats San Antonio
19139 Hamilton Wolfe Lofts San Antonio
19143 Reserve at New York Arlington
19146 New Hope Housing Avenue J Houston
19148 Reserve at Lake Shore Waco
19158 Pendleton Square Harlingen
19159 Mid Tule Village Apartments Tulia
19161 Star of Texas Housing Montgomery
19164 Commerce Street Apartments Belton
19166 Villas at Robinett Killeen
19176 Anthony Palms Anthony
19177 Edgemere Palms El Paso
19179 Riverwood Commons II Bastrop
19182 Waterpark Palms Anthony
19187 The Ellington Houston
19189 Lakewood Crossing Granbury
19191 Hillcrest Senior Village Kerrville
19202 Heritage Heights at Big Spring Big Spring
19204 Cottonview Terrace Taft
19205 Patriot Park Seniors Plano
19208 Trail Village Brownsville
19214 Lakeridge Villas Ennis
19215 West Ridge Apartments Pharr
19216 Heritage Heights at Abilene Abilene
19217 Redwood Apartments Dumas
19223 Bamboo Estates Apartments Progreso
19225 Rosewood Senior Villas Tyler
19228 Chaparral Apartments Midland
19230 Campanile on Fondren Houston
19232 The Commons at St. Anthony's Amarillo
19234 The Residences at Alsbury Burleson
19235 The Reserves at Saddleback Ranch Wolfforth
19236 Tool Cedar Trails Tool
19237 Gatesville Trails Gatesville
19238 Franklin Trails Franklin
19239 Talavera Lofts Austin
19242 The Tramonti Houston
19244 Mariposa at Harris Road Arlington
19245 Huntington Chimney Rock Houston
19250 Cypress Creek at Waxahachie Waxahachie
19257 Blue Ridge Villas Houston
19266 County Line Lofts Venus
19273 Nolana Villas McAllen
19276 Sunset at Fash Place Fort Worth
19277 Cielo Place Fort Worth
19285 Everly Plaza Fort Worth
19286 West Little York Apartments Houston
19288 Vi Collina Austin
19295 The Abali Austin

P R O C E E D I N G S

MR. GOODWIN: Good morning. Welcome to the Texas Department of Housing and Community Affairs Governing Board meeting, dated July 25, 2019.

We will call roll. Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Here.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: We have a quorum.

We will begin, if you will stand, please, and follow as David leads us in the pledge of allegiance to both American and Texas flags.

(The Pledge of Allegiance and the Texas Allegiance were recited.)

MR. GOODWIN: Let the record reflect that Mr. Cervantes did a perfect job.

So we have the consent agenda and we have the request to pull, from one Board member, item 1(j), so we're going to pull item 1(j).

Any other items that any Board member or member of the public would like to have pulled?

(No response.)

MR. GOODWIN: If not, I'll entertain a motion to approve the consent agenda.

MS. THOMASON: So moved.

MR. GOODWIN: And a second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Moving into the action items, Beau. Action item 3 is the Board presentation, discussion, and possible action to employ an executive director, but before we do that, we are going to go into executive session.

I have to read this to you. The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or executive session at this time. The Board may go into executive session pursuant to Texas Government Code 551.074 for the purposes of discussing personnel matters, pursuant to Texas Government Code 551.071 to seek and receive the legal advice of its attorney or to discuss pending or contemplated litigation.

The closed session will be held within the anteroom to this meeting room, John H. Reagan 140 in the

John H. Reagan Building. The date is July 25, and the time is 8:12 a.m., and we will be back in 15 minutes, so if you have items in front of the Board, please be back in your seat in 15 minutes.

(Whereupon, at 8:12 a.m., the meeting was recessed, to reconvene this same day, Thursday, July 25, 2019, following conclusion of the executive session.)

MR. GOODWIN: The Board is now reconvened in open session at 9:10 a.m.

During the executive session the Board did not adopt any policy, position, resolution, rule, regulation or take any formal action.

MR. ECCLES: There's one little part to that: or vote on any item.

MR. GOODWIN: My wife has decided to attend. Thank you, honey.

(General laughter.)

MR. GOODWIN: Did not adopt any resolution, rule, regulation or take any formal action or vote on any items, save and except for deliberations of personnel matters pursuant to Texas Government Code 551.074.

We will now take up discussion and action on the items that we discussed in closed session. I think we have a motion?

MS. BINGHAM ESCAREÑO: Mr. Chair, I'm here to report on the deliberation regarding a personnel matter. I would like to share that the executive director search committee has deliberated on candidates to fill the permanent executive director position, and we deliberated this with the Board as a whole.

I am very proud to make a motion for the hire of Bobby Wilkinson to be employed as our executive director, effective August 15, and subject to Governor Abbott's approval.

On that same date, my motion would include that David Cervantes resume his role as director of administration. And if I could, just at this time too, to express, along with the Board and the leadership teams, sincere gratitude for your service in the interim role.

(Applause.)

MR. GOODWIN: We have a motion. Do I have a second?

MR. BRADEN: Second.

MR. GOODWIN: We have a motion and a second. Any discussion?

(No response.)

MR. GOODWIN: Before we move forward, Bobby, I know you're out there somewhere. Would you raise your hand?

(Applause.)

MR. GOODWIN: For those of you that don't know Bobby, Bobby is not just the deputy director of the Governor's Budget Office, but he is a family man. Is it four or five young children? Five. Every time I say that, I just find that hard to believe.

But anyway, Bobby is not just a political appointee that the Governor has sent over to us. Bobby is someone who has worked with this agency for the last ten years.

Our former permanent executive director and I spoke last evening, and I was sharing with him that I thought Bobby might get this opportunity today, and his comment to me was: "Eminently qualified, eminently qualified." And you can see by his age that hopefully he'll be in this role many years to come.

We're not just making this motion, but we, as a Board, are genuinely excited to have Bobby coming on board, and many of the staff members, leadership of our staff, have voiced to me how well qualified they felt Bobby is as well.

So unless there's any further discussion, I will call for the motion and a vote. All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Bobby, congratulations.

(Applause.)

MR. GOODWIN: If you're so inclined, would you like to come up and say a few words, or let us move on? We're going to find out how windy you are. State your name and sign in.

(General laughter.)

MR. WILKINSON: I'm Bobby Wilkinson, deputy budget director of the Governor's Office. I want to thank you very much for the confidence you've placed in me and for the vote of confidence. It's been a pleasure working with this agency for the last few years, and I'm really looking forward to new role outside of the executive and in an agency getting in the weeds, doing the work we need to do. I'm so happy to work with you. This is a great Board. I'm really proud to work with you and with the staff of TDHCA. I'm really appreciative.

Thank you very much, everyone.

MR. GOODWIN: Thanks, Bobby, Congratulations.

(Applause.)

So we're going to take up item 1(j), Housing Resource Center.

MS. RESÉNDIZ: Yes, sir.

MR. GOODWIN: Okay. Well, let's have staff report first.

MS. RESÉNDIZ: Oh, pardon.

MR. GOODWIN: Go ahead.

MS. YEVICH: Certainly. Good morning, Board.

And congratulations. How lucky am I between this announcement and Housing Tax Credits. Wow.

Okay. Good morning. I'm Elizabeth Yevich. I'm the director of the Housing Resource Center, and the item before you this morning is the presentation, discussion, and possible action on the 2020 Regional Allocation Formula, the methodology.

If you recall, I was here in May and I gave a presentation on it, and I just wanted to say that since that time the methodology was open for a public comment period. We also had a public hearing at the end of May, and there was absolutely no public comment on it, so the item is identical to what was presented to you in May.

And if you would like me to review any of that, I will be glad to, or take some questions, but we would recommend approval of the methodology.

MR. GOODWIN: Okay. Asusena, you have questions?

MS. RESÉNDIZ: Yes, sir.

So first and foremost, thank y'all so much for working with all of the regions that we have listed. I fundamentally believe that they need not only our support but also our guidance.

I found it interesting, most interesting that there are so many pockets that are empty. When I saw the list of the regions that we provide and allocate money to, I also noticed that there were regions that weren't, Lubbock, as an example. I was trying to help one individual with the first-time homeowners loan and give her that information, and unfortunately, Lubbock didn't qualify because it wasn't on the list.

So if you can tell me, one, how that works and also help us understand how the State identifies those specific regions to support above any other regions.

MS. YEVICH: Well, I'm going to start out with a quote that was told to me ten years ago when I started this: "The Regional Allocation Formula is a thing of beauty. It is very complicated."

And if you recall from the presentation in May, the RAF, as it is known, is just for three program areas, first of all, so it's for Housing Tax Credits, for HOME, single-family, multifamily, and for that State Housing Trust Fund when it qualifies. And so then it is sliced and divided into the 13 state service regions which this agency operates under and the subregions.

And I really did want to point out that the numbers that you are seeing in the Board writeup, those are examples, absolutely examples only. That is not the money that is going to be out there.

Like for Housing Tax Credit, until the money comes in IRS, that won't be there. For the HOME Program we just got the contracts in last week for what the HOME funding will be, and once that comes in, then that will be put into the formula. So partly for like more of the urban regions, like the HOME funding, the PJs are removed because HOME is non-PJs, so that's why you would sometimes see more money in a rural region than urban.

Does that help to explain? Other than that, it gets very, very complicated.

MS. RESÉNDIZ: And just so everyone here knows, what's the acronym PJ?

MS. YEVICH: Oh. Participating jurisdiction.

MS. RESÉNDIZ: Okay. So it doesn't completely answer my question; either that or I'm not smart enough to understand it.

I just want to make sure that we're using what resources we have, not just the human capital but whatever money we have allocated for X program that is most vital to certain regions, because where I'm trying to figure out how we're going to work moving forward, especially with the new executive director, is looking at the program that we currently hold that we are new to the activity. Most people here know how passionate I am about the migrant program that we have.

So is there a possibility of sharing with the Board a list of the money we have either in excess, how we're going to identify those points of opportunity because we have so much money just sitting there that we haven't done anything with, and the money that has been sitting there, I'd like to see how we're going to promote not just our programs but the agency, because there's so many people that I've spoken with that don't know what we offer.

The first-time homebuyer program is a clear example. Again, just looking at several individuals that would really be strong candidates for that first-time homebuyer program, you know, it was disappointing for me to tell them that they didn't qualify.

MS. BOSTON: Thank you. Brooke Boston, director of programs. And Elizabeth, I know, can answer this as well, but because you're talking about all the program money, first I just want to say I think you have the idea that there's a lot of money unspoken for; that isn't necessarily accurate.

We do have a lot of money as an agency, but almost all of it, of course, comes through for different federal programs and has to be planned and allocated, and those are all documents you guys see.

So for instance, two other agenda items on the Board today are the LIHEAP plan, which is a very big program of ours, and the CSBG Program, and in both of those cases today, all in one you're approving the plan and the action of making awards to get out all of that across all 254 counties, so there's no part of the state that won't see the benefit of those.

So usually almost within 30 days or less of us really having access to any federal resource, we're coming to you guys with the plan to release that money and get it out. There's very little money inside the agency that isn't currently out in some type of notice of funding availability or allocated through some Board action for contracts.

So we definitely can get you a report of what are the different program pots of money, when they're allocated, how they're allocated, but I do want to make sure you guys understand there's not a lot of money sitting unused.

MR. CERVANTES: Brooke, I'm just thinking, can you maybe just elaborate a little bit in terms of the threshold in terms of when the RAF kicks in and what it does not? I think that distinction is also important to know.

MS. BOSTON: Definitely, definitely. As Elizabeth had mentioned, the RAF is applied in the case of tax credits, in the case of HOME, and in the case of the state trust fund if a program activity exceeds $3 million.

In the case of tax credits and HOME and the trust fund, in all three cases those regions cover the entire state, so there's no one region who we feel like isn't important. The data that feeds into the formula does have some regions get less than others, but it's because, based on the formula itself that ties with need and population and quality of the housing units, how much rents are, it takes all that into consideration and divvies the money up.

So yes, there ends up being some regions who see less than others, but it's for legitimate reasons because those areas have less need. And I know those areas don't feel like they have less need, I totally get it. There's never enough resource in any program so every area is going to feel like there's not enough, and I couldn't agree with them more.

So with that, for the other programs, like the first-time homebuyer program, those programs tend to work on who applies to us, so whether it's trying to qualify as one of our approved lenders, any lender in any part of the state can come to us and get qualified.

And additionally, for our HOME Program or our Trust Fund Program, any nonprofit or local government, depending on what the program is, can come get set up and then access our reservation fund.

We've been recently, in the case of the HOME Program, doing more outreach and trying to target the areas of the state where we're seeing trends of the fewest entities coming to us for assistance, and we've been trying to do more outreach.

Actually, just yesterday our trust fund NSP, Bootstrap and HOME programs did a conversation with the Texas Association of Regional Councils, TARC, to try and get some of them to start becoming participants in more of our programs. So we're definitely aware of trying to branch out more.

MS. RESÉNDIZ: So the participants that are encouraged to apply for these programs to help support us, who would they be or what organization or what industry are we looking at?

MS. BOSTON: It varies for each program. Primarily it's nonprofits and local governments. We have the community action agencies, those tend to be nonprofits, and of course, then there would be nonprofit developers.

In the case of HOME Program we often have small local jurisdictions in rural parts of Texas who are the applicants. So it varies. In the Bootstrap Program, a lot of the nonprofits who participate are Habitat for Humanity because they already have an infrastructure in place for doing sweat equity and bootstrap.

MR. CERVANTES: Asusena, in reference to the migrant farm worker business, you know, you'll see awards such as the Community Services Block Grant, and there are discretionary pools that also exist within those types of grants that in some cases those activities may be planned for and selected. And so that's one avenue that perhaps presents opportunities in that area, for instance.

And of course, we've talked about in previous meetings the state funding that we recently are going to get, the appropriated receipts. That's a little different element in terms of managing the limited resources that we're going to have there, but that's also an integration point on activities such as, I know, the one that you're very passionate about.

MS. RESÉNDIZ: And just to be clear, I'm not looking at what we have in our budget or what the state is providing annually or granting us. I'm just trying to understand, more importantly, how these organizations that are applying, what are the metrics. How long is it taking us to get them approved, and if they aren't approved, what constitutes a nonprofit, as an example, to not qualify?

And do nonprofits that aren't on the list of the regions that we support, you know, the first-time homebuyer program, are they able to apply, or would they even apply, does it even make sense for them to apply for that?

MS. BOSTON: Well, and that's a really big question, because it's different for every program, so it's not a flat answer, you know, as if you want to be a nonprofit and receive funds from TDHCA, here's what you do. It's if you're a nonprofit and you want to do homebuyer rehab in the HOME Program, here's what your application to us needs to look like.

I would say that the turnaround time in our review, if they gave us everything they were supposed to start with, is probably less than 30 days, and then we have to check their previous participation background and make sure that they don't have any issues that have come up in the past from anything else they've done with the agency.

So I think, in general, you could have an organization who's requesting to be set up in our reservation system for that program within, I would say, 30 to 60 days, and then if there's funds there, then that means they can start accessing it right away.

Again, it varies by program. I can definitely get you information about that for all of them.

MS. RESÉNDIZ: Yes, please. And how was that timeline selected? Less than 30 days is very little time, in my mind, to not only apply because I would imagine that they're quite tedious applications.

MS. BOSTON: I'm sorry; I must have misspoke. I didn't mean that we tell them they have to turn it in within 30 days. In most of our programs they can turn in almost through the entire year. I'm saying once they turn it in to us, we can get our review done and get them approved usually within 30 days.

MR. CERVANTES: I would add that, also, like in the first-time homebuyer sectors, you know, what happens many times is you have this lender community out there that are participating lenders that are helping us with establishing those financing mechanisms for those loans and what-have-you.

But you go into some regions of the state -- and staff can probably confirm this -- when you go into some of those areas that are a bit more remote, you're trying to get them into a metropolitan area if possible, but a lot of times they like to borrow from local banks, smaller institutions that they're accustomed to, so you may not see our activity find its way there, but sometimes there's a preference by the borrower to use some of the local institutions that are there to service them in many cases.

And so there is some absence at points in time, but that's not for lack of outreach to try to continue to find lenders that would understand our products and be able to provide opportunities in those areas. Just kind of keep that in mind a little bit.

MS. BOSTON: And I would say usually once or twice a year, if not more frequently, every one of our program directors will look through their areas and see, you know, what regions are not getting enough applications, are there certain types of organizations that used to participate and have stopped, and then we'll reach out to them and try and figure out why, and if it's something that was just a change in a policy and that was actually a really good participant, we can consider if that's worth revisiting. So we do try pretty actively to continue to assess.

For areas where we aren't seeing participation in regions -- so for example, the Amy Young Barrier Removal Program, for several years we didn't have applications in probably three or four of the state regions. It's a hard program to run if you don't already have some infrastructure to do the program.

And so our staff for that area actively went out and kind of cold-called some nonprofits, either ones who were already working in other TDHCA programs but had never done this one, and tried to seek them out and then gave them a lot of T and TA to get them ready to turn in an application and then become a participating provider.

But we can definitely get you a report that you're asking for.

MS. RESÉNDIZ: Everything that you just mentioned, yes, a report just so we know how we could identify how we could possibly use that money to where it makes sense either through a marketing and outreach effort, or you know, you'd mentioned a lot of these regions that are lacking activity and applications, if that's the case, then what are we doing.

Again, the nonprofits that hold contracts -- as an example, Petersburg, Texas, where I'm from, population 1,200, let's just say Lubbock, we're able to be served. We're 45 miles northeast of Lubbock, but yet if there's not a lender or there's not an opportunity in Lubbock, Texas, for this particular program that we offer, which it's a great program, and I'm just passionate about helping the little guy too, so I want to make sure that our outreach efforts and our dollars.

And by the way, when I said a lot of money, I shouldn't have said that, but it's a lot of money compared to what I have in my bank account, that's for sure.

MS. BOSTON: Amen.

(General laughter.)

MS. RESÉNDIZ: But if we could just have a better understanding of how we could use that money or how staff has planned on using the money that we have. I haven't seen any activity since I've been on the Board, but I don't know what that looks like. So if you could do that for us, that would be great.

MS. BOSTON: Definitely. An overall picture of all the programs in one picture. Got it.

MS. RESÉNDIZ: Brooke, thank you.

MS. BOSTON: Definitely.

MR. GOODWIN: Any other questions?

MR. VASQUEZ: Mr. Chairman, just to clarify just so we all understand, this first-time homebuyer program, we're currently doing over a billion dollars a year, a hundred million dollars a month in first-time homebuyer loans that are out there, and on top of that, we just released a program at, what, 3.5 percent mortgage rates, I think.

MR. CERVANTES: That's where they're running.

MR. VASQUEZ: I think when you look across the state, we're doing an enormous amount of generating of mortgages.

MS. BOSTON: Yes. And our data area, we have a section called the Fair Housing Data Management and Reporting area, and specifically for that program we've looked through the data and evaluated, you know, where are we hitting in the state, where are we not. Which, again, the lenders have to come to us, but if they don't, we can do outreach, but to some extent, you know, if they don't come, we can't force their hand.

But we have done some analysis to make sure we feel like we're hitting representative populations for the areas, and I've been very impressed that it's very accurate, like the people we're helping are very representational of the areas that we're serving, and the division has worked to try and hit some additional areas, so they're actively trying to branch out.

MS. RESÉNDIZ: So have we met with the lenders to ask them to step it up even more to help other folks?

MS. BOSTON: So asking the current lender network if they'd kind of go outside their normal areas?

MS. RESÉNDIZ: Yeah, because these lenders are clearly invested in what we're doing and in what the mission of that particular program is. Again, looking at our energy program, as well, that ties into it.

MS. BOSTON: For the first question, I don't know how much we encourage the lenders to go outside their kind of normal bank service area, but I can definitely ask Kathy to give me that information and we'll put that in the report as well.

MS. RESÉNDIZ: That would be great. Please.

MR. GOODWIN: Any other questions or comments?

(No response.)

MR. GOODWIN: Brooke, thank you. Elizabeth, thank you.

In front of each Board meeting we have a programmatic impact, and I think it's a good point to bring it up. In 2018 we helped 613,000 households in the State of Texas.

So do I hear a motion to approve item 1(j) on the agenda?

MS. BINGHAM ESCAREÑO: Move to approve.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Okay. It's been moved and seconded. Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Moving on, item 4 has been pulled for today's meeting, so we'll move into item 5.

MR. BANUELOS: Good morning. Rosalio Banuelos, director of Multifamily Asset Management.

Item 5 is presentation, discussion, and possible action regarding a waiver and loan modification for Villas of Brownwood II, Multifamily Direct Loan No. 1001714001.

This is a 36-unit development in Brownwood which was approved for a $1.5 million HOME loan in 2012. The Department's loan has a 35-year term, it's amortized over 40 years, has a zero percent interest rate, and has a current balance of $1,347,808.

In 2018, as part of a refinancing to a combined senior loan, the owners of this development was merged with the owner of 377 Villas of Brownwood, an adjacent 76-unit exchange property owned by the same principals. The first lien debt covering both developments is now being refinanced, but this time with a HUD-insured loan, which resulted in the need for this waiver and loan modification.

As a condition for closing, HUD requires the Department to execute a subordination agreement and requires the term of the HOME note to be modified to extend the maturity date from September 1, 2049, to December 31, 2054, to align with the 35-year term of the new loan, so the owner is requesting this change.

Additionally, HUD mandates that the subordinate loan can only be repaid from 75 percent of surplus cash generated by the property or monies received from non-project sources.

HUD's definition of surplus cash conflicts with the definition in the Department's current rules and creates a conflict between the surplus cash definition and the subordination agreement and the definition in the note for the Department's loan.

So the owner is requesting a waiver of the definition of surplus cash specified in the Department's rules in order to use HUD's definition of surplus cash. The owner is also requesting to change the payment terms of the HOME loan from a monthly hard debt to an annual payment based on 75 percent of surplus cash and non-project sources, as defined by HUD.

And finally the owner is also seeking approval to increase the amount of the first lien debt with a $4.3 million HUD that includes a cash-out payment of $327,000, approximately, that would be used to repay $83,670 in deferred general contractor fees, to reimburse $199,496 to the general partner for loans that were advanced for operating losses on the property, and the remainder would be used to fund a special reserve account for 377 Villas as required in the exchange documents and the rules.

The annual debt service, including MIP, for the new loan will be $239,581, which is lower than the current debt service of $262,767 for the loan that was put in place in 2018.

Staff analysis indicates that the increased senior lien debt will not negatively impact the development's financial feasibility as an aggregate DCR of 1.37 is projected based on the actuals; however, the requested use for the increased debt amount and cash-out payment exceeds the executive director's authority defined in the rules, and therefore Board approval is necessary for the increase in the first lien debt.

Staff recommends approval of the requested waiver of the definition of surplus cash specified in 10 TAC 13.212, and the modification of the HOME note for Villas of Brownwood II.

Staff also recommends approval of the owner's request for an increased first-line amount, as the proposed financing would result in a reduction to the annual debt service of the first lien debt, which improves the development's financial feasibility.

That's all I have, but I am available for questions if there are any.

MR. GOODWIN: Do I hear a motion to approve staff's recommendation?

MS. THOMASON: So moved.

MR. GOODWIN: It's been moved. Second?

MR. BRADEN: Second.

MR. GOODWIN: Moved and seconded. Any discussion, questions?

MR. VASQUEZ: I have a question here.

MR. GOODWIN: Okay.

MR. VASQUEZ: So we are going to -- this motion, part of it is to provide a cash-out reimbursement for operating losses of the general partner?

MR. BANUELOS: That the general partner has advanced to the partnership.

MR. VASQUEZ: Are there some sort of extenuating circumstances that caused these operating losses? Again, what I'll ultimately get to is why are we being asked to reimburse those operating losses.

MR. BANUELOS: And just to be clear, the reimbursement is coming from the refinance of the HUD loan, so the HUD loan is paying for those but it is going ahead of our payment. The property had been struggling financially so it hadn't been operating great, but we did not get into the details as to how the operating losses accrued over time.

MR. VASQUEZ: Okay. So effectively it's an increased HUD loan that is going to be repaying those operating losses.

MR. BANUELOS: That is correct.

MR. VASQUEZ: It's just that that's senior to us.

MR. BANUELOS: Correct.

MR. VASQUEZ: I don't like the concept, but okay.

MR. GOODWIN: Any other questions?

MR. MacDONALD: Justin MacDonald, general partner for this development.

I can address that, Mr. Vasquez. What happened was basically we saw an increase in property taxes shortly after the property was first built that went well above and beyond what had been included in the original pro forma, and that, including slower rent increases, as promulgated by HUD and TDHCA, created kind of a little bit of a storm there that caused us to have to influx some cash into the property.

Since then, the property taxes have not gone up as much, and rent increases have taken effect and so the property is cash flowing a lot better; however, it was not cash flowing at a level that would allow us to repay those advances that we made previously, which is why we're including it in this loan, and since the interest rate is that much lower, as Rosalio mentioned, it's actually going to be having a lower monthly debt service payment and will allow us to repay those advances.

MR. VASQUEZ: Okay. So this number is attributed to the increased property taxes, and I assume its net tax impact of those extra tax savings -- income tax savings from the property taxes.

MR. MacDONALD: Yes.

MR. GOODWIN: Any other questions?

MS. BINGHAM ESCAREÑO: And, Justin, you deferred your general contractor fees too as part of that?

MR. MacDONALD: That is correct. We deferred our GC fees as part of the original deal, and again, had anticipated that those would be paid back; however, again, due to the property's previous cash shortfall, those were not able to be paid back as timely as we thought they would be.

MR. GOODWIN: One other question, Justin. Over what period of time did these losses accumulate?

MR. MacDONALD: Let's see, those were probably from about 2012 and '13 till about 2016.

MR. GOODWIN: Okay. Any other questions?

(No response.)

MR. GOODWIN: If not, we have a motion. All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Moving on to item 6(a).

MR. REED: Good morning, Mr. Chairman, Board members. I'm Gavin Reed, manager of planning and training in the Community Affairs Division.

I'm here to submit to you item 6(a), which describes proposed rule revisions to Section 2.203 and Section 2.204 of the TAC.

Sections 2.203 and 2.204 address how the Department will enforce noncompliance with program requirements for Community Services Block Grant eligible entities such as, for example, termination or reduction of an eligible entity's funding and the initiation of a QIP, quality improvement plan, and its contents.

Staff has recognized the need for revisions to these sections and has streamlined them by removing superfluous language, using consistent terminology, and describing certain steps in further detail that may have been confusing. We've already gone to the community action network of subrecipients with an early draft and received input which is reflected in the draft proposal before you today.

If authorized by the Board, we will proceed to publish the proposed rules in the *Texas Register* for the more formal public comment process and return to the Board for final adoption in a few months. Staff requests your approval to begin that process.

If you have any questions, I'll be glad to answer.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Do I hear a motion to approve staff's recommendation?

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: It's been moved and seconded. No further discussion. All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Item 6(b).

MR. REED: Thank you.

MR. GOODWIN: Thank you, Gavin.

MR. GONZALES: Good morning, Chairman Goodwin and Board members. My name is Raul Gonzales, director of

Housing Trust Fund, Office of Colonia Initiatives and Neighborhood Stabilization Program. I will be presenting the next four items for you.

On item 6(b) we are recommending the repeal of 10 TAC, Chapter 20, our Single-family Program umbrella rule, and at the same time we are proposing the rule be replaced with revisions. If approved today, the draft rule will be published in the *Texas Register* and made available for public comment. The 30-day public comment period will begin on August 9 and end September 9.

The proposed draft of the umbrella rules has changes that include adding definitions for terms referred to elsewhere in the rule, development improvement survey and reverse mortgages, including citations for the Texas Tax Code and providing further guidance on households addressing tax delinquencies, providing further guidance on requirements for housing counseling and mobility counseling in compliance with new federal regulations, clarifying that the Amy Young Barrier Removal Program is exempt from requirements in the insurance and title requirements, and specifying requirements of third party loans, refinancing primary mortgages and title reports.

We've held several roundtables in June to discuss these proposed rule changes with some of our partner.

And with that, I'm happy to answer any questions you might have.

MR. GOODWIN: Do I hear a motion to approve the staff's recommendation for item 6(b)?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Okay. Any discussion?

(No response.)

MR. GOODWIN: Hearing none, all those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. 6(c), Raul.

MR. GONZALES: Now for item 6(c). We're recommending the repeal of 10 TAC Chapter 21. This rule governs the minimum energy efficiency requirements for our single-family construction, and at the same time we are proposing the rule be replaced with revisions.

If approved today, the draft rule will also be published in the *Texas Register* and made available for comment. The 30-day public comment will run between August 9 and September 9.

Some of the proposed changes included in the draft are designating individual program rules as the place for defining how administrators certify compliance with the rule, including a citation for the state-mandated energy code for residential construction, removing dates of applicability that are outdated and no longer relevant, and adding guidelines for installation of doors.

With that, I'm happy to answer any questions you may have.

MR. GOODWIN: Do I hear a motion to approve staff's recommendation for item 6(c)?

MS. RESÉNDIZ: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any questions or discussion?

(No response.)

MR. GOODWIN: Hearing none, all those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: 6(d).

MR. GONZALES: Staff is also recommending the repeal of 10 TAC Chapter 24, the rule that governs our Texas Bootstrap Loan Program, and at the same time proposing the rule be replaced with revisions. If approved today, the draft rule will be published in the *Texas Register* and the 30-day comment period will begin August 9 and run through September 9.

Some of the proposed changes in the rule are clarifying program administration and certification of our nonprofit owner-builder housing program, including citations of requirements for the fair housing, affirmative marketing and reasonable accommodation, changing the length of extension the Department may grant to a participant of the program from 90 days to 180 days to complete construction and close on their loan.

Staff has had discussion with administrators on the program to garner some of their input and we've discussed some of these changes with them.

And with that, I'm happy to answer any questions.

MR. GOODWIN: Do I hear a motion to approve staff's recommendation?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Moved. Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Moved and seconded. Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: 6(e).

MR. GONZALES: 6(e). For this item staff is also recommending the repeal of 10 TAC Chapter 26 -- this rule governs our state Housing Trust Fund Program -- and at the same time proposing the rule be replaced with the revisions. Again, after today the rule will be published in the *Texas Register* and available for comment from August 9 through September 9.

Some of the proposed changes to the rule are clarifying how the Department may utilize Housing Trust Fund loan repayments and interest earnings to resolve unanticipated challenges when administering single-family programs, removing the $20,000 cap on grant assistance for the Amy Young Barrier Removal Program in order to provide flexibility and responsiveness to rising construction costs, modifying the qualified inspector minimum experience requirement from five years to three years, including citations for requirements regarding financial accountability, creating an exception for certain pre-1995 manufactured housing units to participate in the program as long as they receive exterior-only accessibility modifications, and adding a 12-month warranty requirement on all project deliverables.

Again, some of these changes have been discussed with our partners.

And with that, I'll be happy to answer any questions.

MR. GOODWIN: A motion to approve item 6(e)?

MS. RESÉNDIZ: Move to approve.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Moved and seconded. Any discussion?

(No response.)

MR. GOODWIN: Hearing none, all in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you, Raul.

Moving on to item 7.

MS. MURPHY: Good morning. Patricia Murphy, director of the Compliance Division.

The next item on your agenda is presentation, discussion, and possible action on increase to a service contract with a company called Onsite Insight, who we've outsourced the Uniform Physical Conditions Standards inspections to. It's requesting about a 19-percent increase, from $350,000 to $430,000.

In February of 2019, the U.S. Treasury Department released new compliance-monitoring regulations that significantly increase the number of units that must be inspected and the number of files that must be reviewed.

We've done some analysis, and under the new regulation in calendar year 2020 the number of units that will need to be inspected will nearly double, from 10,373 to 19,148. And those numbers just include Housing Tax Credit properties that are in the 15-year compliance period. There's about another 5,000 units that we'll need to inspect for like the HOME Program, the Housing Trust Fund, NSP, and properties that have passed that 15-year compliance period.

So we're requesting an increase to this contract. The funds for this increase were included in the 2020 fiscal budget that you approved at your last Board meeting, and this request is being brought to you in accordance with Texas Government Code, Chapter 21, 55.088, which requires state agencies to get approval from their governing board if material changes are made to existing contracts.

So staff requests approval of this change, and

I'm available to answer any questions you might have.

MR. GOODWIN: Motion to approve staff's recommendation for item 7?

MS. RESÉNDIZ: I have a question.

MR. GOODWIN: I need a motion first.

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Okay. Questions and discussion.

MS. RESÉNDIZ: So the 19 percent, what is that exact number, just so we have an idea.

MS. MURPHY: I can't do math well standing, but the difference between 350 and 430, what's the difference between 350 and 430?

MR. GOODWIN: Eighty thousand.

MS. MURPHY: Eighty thousand. Yes, Patricia Murphy, director of Compliance.

(General laughter.)

MS. BINGHAM ESCAREÑO: So, Patricia, they still charge per unit, you just need the Board to approve an increase in the annual amount because the volume is going to be higher under the new standards.

MS. MURPHY: That's correct. The contract we have with Onsite Insight, they charge $29 per unit. We will go out for request for proposals in the spring of

2020, so we'll rebid this contract.

MR. ECCLES: And I'll note that this is not exactly a popular regulation that's come out, and there are a number of entities that are challenging this interpretation by the Treasury Department. This is not a commitment of the funds, this is just seeking authority. Right?

MS. MURPHY: Correct. So the National Council of State Housing Agencies and several other entities are contacting the Treasury Department and trying to get them to rescind this, so if they do rescind it, then we won't spend the amount, but we need the authority to do this in case we have to do it.

MR. GOODWIN: Okay. Any other questions?

(No response.)

MR. GOODWIN: If not, all those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Item 8(a), Andrew.

MR. SINNOTT: Good morning, Chairman Goodwin and members of the Board.

And congratulations and welcome to Bobby. Look forward to working with you.

And thank you for service, David. It's been nice working with you in your temporary role.

Item 8(a) is presentation, discussion, and possible action on a waiver and award of a pre-development grant from our 2019-2 Special Purpose NOFA for Predevelopment.

The 2019-2 Special Purpose NOFA which allows for predevelopment grants of up to $50,000 was approved by the Board back in February. Since that time we have received several applications, and application 19550 submitted by Project Transitions is the first application that we are bringing to you for recommendation of award.

Before I get into the predevelopment award recommendation, however, this application has requested a waiver of the applicant eligibility provision in Section 2 of the NOFA which excludes individuals and affiliate entities that have received an award of funds from the Department within the past ten years from having control of a proposed development awarded under this NOFA, which leads me to a slight correction in the bar. The date in the fourth recital of this item should be January 1, 2009. I think it's 2019 in your Board book.

The reason they are requesting a waiver of this section of the NOFA is because Walter Moreau and the organization for which he is the executive director, Foundation Communities, has been enlisted by the applicant for this proposed development for the purpose of meeting their experience requirement in our rules.

Foundation Communities will be the 10 percent developer in the proposed development as a result, which leads me to another minor correction in this item. In the background it states that Foundation Communities will have a 10 percent ownership interest, which is incorrect. Foundation Communities will only be the 10 percent developer and will potentially receive 10 percent of the developer fee.

The waiver request is being made outside of the waiver requirements in Chapter 11, which is how we have to handle most of our waivers, and under Section 9(c) of the 2019-2 NOFA, which grants the Board the authority to waive procedural provisions of this NOFA on a case-by-case basis where such exceptions are not in violation with any state or federal requirements which this waiver complies with and only while the NOFA is open which the NOFA is open through November 26 of this year.

Staff believes that this waiver is justified in order for the applicant, which has never received an award from the Department, to meet the experience requirement and recommends approval of the waiver and approval of a $50,000 predevelopment grant to Project Transitions which plans on using the funds for Roosevelt Gardens, a 40-unit development in Austin that will serve a supportive housing population.

And with that, I'll be happy to answer any questions.

MR. GOODWIN: Do I hear a motion to accept staff's recommendation?

MS. THOMASON: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: Okay. It's been moved and seconded. Any questions?

(No response.)

MR. GOODWIN: Hearing none, we will vote. All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. SINNOTT: Thank you.

MR. GOODWIN: Thank you, Andrew.

Item 8(b) and (c). Right, Marni?

MS. HOLLOWAY: Yes. I only have two this time. Regarding our previous item on the predevelopment grants, I need to give a big shout out to Andrew and to Alena for putting this program together -- it's something that we haven't done in years and years and years -- and particularly to Alena for drafting a very clear, simple NOFA and creating a new application for us. I think they've done a great job on that.

MR. GOODWIN: Thank you.

MS. HOLLOWAY: This next item is presentation, discussion, and possible action regarding an award of direct-loan funds from the 2018-1 Direct Loan NOFA. This is 18503 Eastern Oaks, right here in Austin.

This item was presented to you at the February 21 meeting and was tabled with instruction to staff to return with a verification of the rehabilitation costs. There was a very spirited conversation about some of those costs.

You'll recall Eastern Oaks Apartments was constructed in 1982 as public housing. There are 15 residential buildings, an office building, and a maintenance building on almost five acres in southeast Austin.

While the housing authority has tried to maintain the property over the years, it has not received a major rehabilitation. The property condition assessment included in the application reports necessary repairs and estimated costs.

The property has a number of general

deficiencies, with estimated repair costs just under $200,000, including regrading most of the site for drainage, landscaping and a boundary fence, sidewalks and ramps that need to be replaced and updated to meet ADA requirements.

The exteriors of the buildings require repairs estimated at $487,000. Right now 75 percent of the exterior trim is damaged and needs to be replaced; doors and windows also need to be replaced, along with masonry repairs, and the roofs will need to be replaced to assure that they'll last through our affordability period.

The interior of the apartments and the office require $375,000 of repairs to electrical, plumbing and mechanical systems, and another $472,000 for repair and replacement of interior fixtures, finishes and equipment, like floor and cabinet and appliances.

The hard costs, which include building cost, contingency and the site work on site amenities for this development total $1,908,023, with a hard cost per unit of $63,600. The total development cost is at $3,550,301, with a total development cost per unit of $118,343. So the difference is soft costs that will discuss in a moment.

Part of our discussion at the February meeting was about rehabilitation costs in general, and in your

Board item you'll see that the cost for Eastern Oaks falls well within the range of rehabilitation costs for properties in Austin over the past five years. So the range on hard costs is $14,286 to $94,000, so at $63- they're right in there. Total cost is ranging from $50,345 to $207,444, so they're also well within that range.

During that discussion on February 21, there was conversation regarding rehabilitation as compared to the costs for new construction. For the current 9-percent round, costs in Austin for new construction and reconstruction range from $113.50 to $193 per square foot. With a net rentable area of almost 23,000 square feet, the cost to rehabilitate Eastern Oaks, including relocation, is $141.72, so also within that range.

The development cost schedule includes $300,000 for relocation. The applicant has provided a budget for relocation of residents during a 12-month construction period. Due to the extensive nature of the planned rehabilitation -- they're going all the way to the studs -- all residents will be moved to other locations during that period. The budget that's been presented is based on the applicant's recent experience with two very similar developments in Austin.

The applicant has a compliance history that is designated as a medium portfolio category 3, which was deemed acceptable with conditions by EARAC. Those conditions are described in your Board item.

Long-term feasibility requirements in our REA rules require that a development not have any negative cash flow throughout the term of the loan, and this development is projected to have negative cash flow beginning in year ten. Our rules allow non-direct-loan finance developments that do not meet long-term feasibility requirements to be recharacterized as feasible if the development will receive project-based rental assistance, which this development will. That project-based rental assistance will increase over time to cover the costs of the development.

The direct loan is the only source of Department funding for this application, and our rules require that applications in this situation provide equity in amounts not less than 20 percent of the total cost and an appraisal that results in a total repayable loan to value of not more than 80 percent, neither of which are available for Eastern Oaks.

The applicant has submitted a waiver request because they are a public housing authority with limited means, and bringing owner equity into the funding stack would cause the need for additional waivers with regard to debt coverage ratio. The housing authority had no ability to avoid the need for this waiver.

The risk that is intended to be mitigated by the equity requirement is partially mitigated by the applicant's financial institution certifying that they have liquid assets equal to at least 10 percent of the total housing development cost and our expectation that the post-rehabilitation value will significantly exceed the current as-is value of the property.

This application was received in 2018, and the 2018 Direct Loan and Uniform Multifamily rules will apply.

The application requests $2 million from the soft payment set-aside, and they are committed to restricting 20 units at 30 percent of AMI in order to qualify for that financing.

This would be structured as a 30-year deferred forgivable loan at zero percent interest. This set-aside is intended to serve the most vulnerable Texans. In Austin, a household of four at 30 percent of AMI will have no more than $25,800 in annual income, and a household of one will have no more than $18,100 per year annual income.

Staff recommends approval of the requested waivers and award to this application of the requested $2 million in TCAP repayment funds.

I'll be happy to take any questions. I believe

Brent is here to respond to any questions regarding the underwriting and cost process.

MR. GOODWIN: Do I hear a motion to approve staff's recommendation before we get into questions?

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MS. BINGHAM ESCAREÑO: Second.

MR. GOODWIN: Okay. Any questions?

MS. BINGHAM ESCAREÑO: I do, I think for Brent or Marni.

So the request is made based on the assumption that the new value will be significantly higher than the current as-is?

MS. HOLLOWAY: Correct.

MS. BINGHAM ESCAREÑO: And so we agree with that? I mean, it looks like the improvements that will be made would substantially increase the value?

MS. HOLLOWAY: Absolutely.

MR. BRADEN: My recollection is the chair had certain questions last time.

MR. GOODWIN: I had a lot of questions, and I still have some questions about it, because when I read the application -- and, Brent, you might want to answer some of these because some of this is based on the -- I had actually seen this property and then went back and saw a property that they had remodeled that is identical to this just yesterday, and any of my questions are relieved over the hard costs. I saw what looked to me to be every penny of the hard costs spent on it.

But talking about what you sent me yesterday looked like all hard costs, plus contractors' fees, plus contingency was about $2.2 million.

MR. STEWART: Yes, sir.

MR. GOODWIN: And we're funding $2 million of this, then the City of Austin is funding a million, and then somebody else is funding $400,000. Is that the bank loan from IBC Bank, I think? I may have the banks wrong. So there's a total of $3.4 million, and if the $2.2- covers the construction cost, contingency and the $300,000, the relocation estimate, where does the other $900,000 go?

MR. STEWART: The soft costs. There's a minor amount of reserves in the transaction, there's $410,000 of developer fee in the transaction which is in that soft cost number. The interest carry, the financing costs to originate the loans with the bank, the interim interest is built into that soft cost number.

MR. GOODWIN: If I take out the per-unit numbers from this and do it on a per-unit basis and add the $300,000 relocation into "a cost," it looks like the soft costs as opposed to a percentage of the hard costs is about 71 percent, and that's after a GC fee of, I think, 10 percent, which is the hard costs. Does the Travis County Housing Authority have a separate partner that's doing it and collecting a development fee?

MR. STEWART: Not on this transaction, no.

MR. GOODWIN: So we're paying the Travis County Housing Authority a developer fee to handle their own project. Is that normal? I mean, I'm asking a question.

MR. STEWART: Yes. In this case, yes.

MR. GOODWIN: So they will collect that $450,000 developer fee and stick it into the Travis County Housing Authority?

MR. STEWART: That's correct.

MR. GOODWIN: Okay. Is that normally done?

MR. STEWART: Yes, that's what the rules allow and do. The 15 percent developer fee was really built around the Tax Credit Program and has kind of slipped into some of these other loan programs that we have.

Development fee on a tax credit deal is intended to provide a yield a little bit different than there would be on a regular heads-up market rate type of deal where your revenue and your sale proceeds at the end of the day are the big part of your return.

On a tax credit deal those things don't really exist and so the construct is you get paid a developer fee up front. Most of the time that developer fee is deferred, which effectively means it's just, you know, receipt of cash flow over time, priority cash flow over time.

So that 15 percent fee has been carried over into other programs, loan programs that we have had and do have at the Department, which is what's providing that 15 percent developer fee on this deal.

MR. GOODWIN: Okay. Any other questions?

MR. BRADEN: So I don't know if you're equipped to answer this. This money that's being paid to the housing authority, you said that's normal for these type of deals?

MR. STEWART: It's consistent with any rehab type of property we would do, any multifamily transaction that we do has basically a 15 percent developer fee on the eligible costs that would be allowable within that developer fee.

In the Tax Credit Program there are costs that are not eligible to claim developer fee on. On this type of transaction these are all costs that would be eligible to calculate developer fee on, except for the reserves. If you compared this development to a tax credit development, there's only a few items that would not be eligible for calculation of the developer fee.

MR. BRADEN: But the tax credit development has private business and private parties involved, and this is one that there are no private parties involved.

MR. STEWART: The only third party involved in the capital stack is the bank and us.

MR. BRADEN: And is there somebody from the housing authority to tell us what they're going to use that $400,000 for?

MR. STEWART: I think Mr. Onion is here, yes.

MR. ONION: Good morning. My name is Robert Onion.

Could you repeat your question so that I can answer it completely?

MR. BRADEN: It seems to me that the housing authority is being paid a developer fee for this development, which is clearly within your mission, the development itself, so I'm just trying to understand why money borrowed from another public agency is being given to you for a developer fee.

MR. ONION: You know, when you say developer's fee, I think that is somewhat of a misstatement, in that it sounds like as if it's a profit that's made. It's really designed to cover our cost.

As you probably are aware, from the time that we submitted this application, it's been about a year and a half, we have been working with staff to get to this point. It is not an easy transaction to get these sources of funds. We have to go through a construction period of administering this.

And really, quite frankly, a developer's fee is what I call a giant contingency, because you're the last person that's going to get paid, and if you have costs that exceed what your expectations are, that's where that money is going to come from.

So really the budget as it sits today is as good as it's going to get. Normally the numbers go, you have overruns, you have different costs, you have unexpected costs, we still have to file the site plan, we're still waiting to hear from the City of Austin, there may be additional requirements.

Any extra money, any extra relocation costs will come out of that number, and really, we're borrowing the $400,000 from Lone Star National as a contingency for that developer's fee. And again, it's a reimbursement for our costs rather than we're making a profit.

MR. BRADEN: Okay. I maybe take issue -- we're probably the last ones to be paid in this process because we're not going to be paid. Right?

MR. ONION: I'm with you.

MR. GOODWIN: So did I understand you right to say that you're not borrowing the $400,000?

MR. ONION: No, no. We are borrowing the $400,000.

MR. GOODWIN: Okay. And you won't request the developer fee of $435,000 if you don't have these contingencies? Let's assume your budget is a good budget, you have $100,000 already in that budget from what I saw -- isn't that right, Brent -- for contingency, so really you're saying on a 30-unit rehabilitation project you need a $535,000 contingency. Is that what I'm hearing you say?

MR. ONION: Yes, sir.

MR. GOODWIN: Okay.

MR. ONION: There's still some unknown costs associated with this, and until I get the general contractor's contract and we have a firm price on it, it's subject to going up.

You know, obviously we gave you some more current bids but prices continue to go up. The longer it takes for construction to get completed, the additional costs we have with regard to relocation, so that number goes up. So it's all a moving number, and like I say, the developer's fee is a contingency. I'd love to be able to bring it in exactly what I thought I'd be able to bring it in at, but at this point you just don't know until all the numbers are settled down.

MR. GOODWIN: And you say you've been working on this project for 18 months?

MR. ONION: Yes, sir.

MR. GOODWIN: And you still have not gotten a permit from the City of Austin?

MR. ONION: Yes, sir, that is correct. We did engage an architect, we did find out that we have to do extensive site work over and above what we thought we would have. That has to do with ADA requirements.

The City of Austin takes six months to a year to get a building permit, but the site plan has to be approved first, and of course, we had to engage a civil engineer, which we're now in a position to do that.

Of course, we've spent somewhere close to 80- to $100,000 at this point in predevelopment costs, and yet we didn't know if we had the source of funds to move forward. So we are moving forward and we're ready to get the necessary permits from the City of Austin with your help.

MR. GOODWIN: The predevelopment costs, is that going to be reimbursed as a part of this $2.2 million hard cost?

MR. ONION: Yes, sir. That is what is

anticipated.

MS. RESÉNDIZ: Mr. Onion, what unknowns do you anticipate for this particular project, unknown costs?

MR. ONION: Unknown costs, we have asbestos in the floor and it needs to be abated. Sometimes that number gets more extensive than we thought it would be, so that certainly is an area that needs to be looked at. Also the relocation costs.

The problem that you're having in the City of Austin is just the skilled labor. It's very difficult to get subcontractors out there on a smaller project. Everybody is busy, and the price keeps going up. Material is up, labor is up, and of course, we have a very robust economy and that's a good thing, but this is the effects of that.

MS. RESÉNDIZ: So with the primes going to subcontractors, is the housing authority doing anything to help the primes identify the subs that could be helpful, and quite honestly, the credits that the state gets for MBEs?

MR. ONION: Well, you know, we rely on our general contractor, third-party general contractor to select the subs that they've worked with in the past; however, they themselves don't have total control over subcontractors.

One of the things that we ran into with the other properties that we developed, we decided to do it in phases. What we learned from that was that's not the way to go because if you go and you ask a contractor to put four roofs on duplexes and come back later when we're ready to move the other people out, we can't get the subs back because they're already on another project, much bigger project, and so that's delayed construction, delayed relocation.

So we've elected to just move all the tenants out at one time. Hopefully that will allow the subcontractors to stay on the job, get the job completed and stay within costs.

MS. RESÉNDIZ: Will you educate me particularly on why the subs aren't in some type of binding contract with the primes? Because if the project is approved, then the primes that work with the subs have to meet standards, and those standards, if they know that they're having a hard time continuing to get subs that are consistent, then I think that's something that the organizations that are requesting the funds should look at and really make an effort to make that a qualifying point. And I may be simplifying it way too much, so you know, is that something that has been considered?

MR. ONION: Certainly. The general contractor, when he signs on our contractor agreement, he agrees to build it for a certain price; however, he has the ability to file change orders based upon unexpected things that come up, so that's really where the contingency comes in and why you need to have contingency and lots of it for the unknown.

MS. RESÉNDIZ: Right. But the developer can come out of the contract, though. He can release the sub if they're not doing what it is that is going to meet the standards of the particular award.

MR. ONION: It's really the general contractor's responsibility to complete his work, and if that subcontractor is not doing that, then he's responsible for getting another to do that.

MS. RESÉNDIZ: Right.

MR. GOODWIN: Any other questions?

MR. BRADEN: So is the $1 million from the City of Austin firm, or is it contingent on things today?

MR. ONION: Yes, sir, it's firm. In fact, when we came here on February 21, that question was asked and we were scheduled for the March meeting. In the March meeting it was approved and so we do have the $1 million from the City of Austin.

MR. BRADEN: Okay.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Hearing none, all those in favor of staff's recommendation signify by saying aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

MS. RESÉNDIZ: Nay.

MR. GOODWIN: Nay. Okay. It passed.

8(c).

MS. HOLLOWAY: Our next item is presentation, discussion, and possible action on timely filed appeal of scoring for tax credit application 19003 The Legacy at Piedmont.

Due primarily to the timing of the appeal relative to this meeting, Mr. Cervantes has presented no recommendation on the appeal. In general, there would have been a letter back saying that your appeal is denied, which effectively denies it and presents it to the Board for final determination.

This application proposes the new construction of 49 units for an elderly population in San Antonio. Staff determined that the application does not qualify for points related to income levels of tenants because the application did not exclude from their calculation the five 30 percent units that they used to qualify for an increase in eligible basis.

So basis boost takes the number that we start from to determine the amount of tax credits. That boost increases up by 30 percent, so it's a very important piece of the entire financial package.

The scoring item, income levels of tenants for the 44 units -- so take out the five that were used for the boost -- exceeds the 54 percent that was required for this 16-point item using income averaging. It comes in at 56.591 percent.

A word about income averaging, this is something new for us this year. We don't even have IRS guidance on how they're going to want us to look at it later; it's still kind of a black box.

Some of our applicants are opting to use that tool, others are still using the more traditional manners of qualifying for this scoring item. And I'm going to read you part of the rule, and I know you don't like that, but --

(General laughter.)

MS. HOLLOWAY: 11.4(c) Increase in eligible basis under 3D says, "The applicant elects to restrict an additional 10 percent of the proposed low-income units for households at or below 30 percent of AMI. These units must be in addition to units required under any other provision of this chapter." So they have to be reserved for this purpose and then you can't use those units at 30 percent for any other reason.

The applicant's appeal states that because income averaging does not require any specific units to be set aside, as would be the case with some of the other elections -- so if they elected to do 40 percent of their units at 50 percent of AMI under this scoring item, they would have those 40 percent of units set aside at 50 percent, and then they could have these five units set aside at 30 percent to get their boost.

So they claim because the income averaging doesn't have a set-aside, you will do this number of units at this income and this number at this income, you just have to have this average, that the provision in the boost rule does not apply.

So in other words, they want to use the same units that they pledged to gain the basis boost to lower their average so that they can score 16 points. This flies in the face of the purpose behind the boost item, in that it proposes providing nothing additional in exchange for additional eligible basis that would ultimately increase their award.

The appeal discusses that the application form and manual, as well as language in the QAP for this item states: "The average income for the proposed development will be 54 percent or lower." They're relying on development rather than these number of units are set aside at whatever and that the form and manual did not instruct the applicant to exclude any units from the average calculation. They assert that the plain language of the QAP directs that the exclusion of those five units does not apply to income averaging and the application form supports this.

I would remind you that the rule says that these units are set aside. I readily admit that being the first year with income averaging, we may not have been as clear as we should have been with the application form.

The appeal further says that income levels of tenants only requires that the average income for the proposed development be less than or equal to 54 percent.

They state that it is impermissible to calculate the average income using anything other than the entire rent schedule because the scoring item says "for the proposed development." Because the language in that scoring item is not as clear as it should have been, it doesn't change the other part of the rule about boost.

So while our rule drafting may have been clearer, I would point out that the IRC amendment that adds average income calls for 40 percent of the units having to be rent-restricted and occupied by individuals whose income do not exceed the impudent income limitations.

So there are subsets coming out of the Code. So that subset of units is what we would be looking at during the compliance process to assure that the development is meeting the IRC requirements.

In that same vein, the 30 percent units that have been set aside in order to access the boost would also be part of our compliance process later, and we would be looking for those units in addition to the units used for the averaging.

Staff recommends -- or actually staff requests that the scoring appeal for 19003 The Legacy at Piedmont be determined by the Board of Directors.

MR. GOODWIN: Your recommendation is that we determine it?

MS. HOLLOWAY: Yes.

MR. GOODWIN: You don't have a denial or recommendation?

MS. HOLLOWAY: I do not on this one. With the timing of this particular appeal, I do not have a recommendation for the Board.

MR. GOODWIN: Okay. So do I hear a motion to accept discussion?

MS. BINGHAM ESCAREÑO: I move to accept

discussion.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Marni, I have a question just so I can make sure I'm understanding. So the total number of units is 49?

MS. HOLLOWAY: The total number of units in the development is 49.

MR. VASQUEZ: Okay. And then there was an original set-aside number of units, or pre-boost, how many units were included for the low-income?

MS. HOLLOWAY: So when they submitted their application, all 49 units were used to meet the income average of 54 percent or less, so they hadn't removed the five 30-percent units that they had requested in another item in order to gain the boost.

MR. VASQUEZ: So there's 49, they're trying to take five of them and say that's --

MS. HOLLOWAY: And use them for two different places.

MR. VASQUEZ: So if they had started out saying we're using 44 units?

MS. HOLLOWAY: It would have been at, under what was submitted to us, 56.591.

MR. VASQUEZ: Which does not qualify.

MS. HOLLOWAY: Which does not get them the 16 points.

MR. VASQUEZ: So they're trying to get both ways. If we took out five units and did the initial calculation from the 44, it does not meet the basic eligibility.

MS. HOLLOWAY: It does not meet the 54 percent that's required to get 16 points.

MR. VASQUEZ: Okay. And then so they have to calculate off of 49 units or 45 units. There will not be five extra units available to put in that lower rate.

MS. HOLLOWAY: Right. If they just want to use all of their units for the 16-point item, then they don't get the boost, which changes the entire financial picture of the application.

MR. VASQUEZ: Okay. I'm sorry, just working through this.

MS. HOLLOWAY: That's fine.

MR. VASQUEZ: So if we start out with 44 units at whatever AMI percentage and had five units at 30 percent, that would get them under the 54, or they'd reach the 54 threshold.

MS. HOLLOWAY: Yes, if they hadn't -- yes, 49 units, the way that it was presented, got them to 54. The problem was out of those 49 units, five of them they were using to request this basis boost on another item that says these units may only be used here, they may not be used in any other part of the application.

MR. VASQUEZ: So it should be additional units.

MS. HOLLOWAY: Right.

MR. VASQUEZ: But if we just applied it at 44 units as originally presented plus five units at the 30 percent, that would just get them the basic 16 points and no boost?

MS. HOLLOWAY: And no boost -- which would be material changes to the application and a question of feasibility.

MR. VASQUEZ: Okay. Let's hear some more.

MR. GOODWIN: With no boost, are they in the money or are they out?

MS. HOLLOWAY: I'm not able to answer that question.

MR. GOODWIN: And if we approve this appeal, what is the project right behind that will drop out of the money?

MS. HOLLOWAY: It's called Village of Nogalitos would drop down to next application down.

MR. GOODWIN: And Village of Nogalitos would be out of the money if we approve this request for this one?

MS. HOLLOWAY: They would move from the award list to the wait list.

MR. GOODWIN: To the wait list. Okay.

Any other questions for Marni?

(No response.)

MS. BAST: Good morning. Cynthia Bast of Locke Lord, representing the applicant in this appeal.

I believe Marni did a good job of trying to explain a complicated issue as we're dealing with this new income-averaging concept; however, I would disagree with her somewhat in that she said that perhaps the rule isn't as clear as it should have been.

Perhaps the rule wasn't clear as to what the staff's intent was, but this applicant believed that the rule was clear and believe that they followed the rule in how they established their income set-asides. And when we have language of a rule that doesn't meet the intended result, we still have to follow the rule and fix it in the next application cycle.

Traditionally, as she mentioned, we have had a system that I'm going to call the set-aside method where by federal law you have to restrict a certain number of your units at certain tenant income levels, and then TDHCA incentivized additional affordability by providing points for people who would agree to set aside additional units at certain income levels.

Now with income averaging a development can have a variety of income levels, all the way up to 80 percent, so long as they average to 60 percent. And I'm going to call this the income-average method in my remarks.

So when TDHCA was trying to implement the income-averaging method and keep some sort of incentive for additional lower affordability, they said that if you had an average income of 54 percent or less on your proposed development, that that would qualify for the points.

So if you look at page 53 of the Board supplement you'll see an excerpt from the application where the applicant is required to prove up the average income. So this first box here, it's yellow in color, asks for the total low-income units.

This proposed development has 49 total low-income units, so that's the number that is inserted, and the workbook then calculates the average income and that amount is below 54 percent. That makes the applicant qualify for 16 points.

The issue, of course, is, as Marni indicated, that this applicant also proposed to be eligible for the

130 percent boost for its credits. That's not a point item, that's not a scoring item. In Section 11.4(c)(3)(D) of the QAP, you can be eligible -- and I will be quick -- for the 130 percent boost if you set aside 10 percent of your units at 30 percent. And the applicant has done that, as we've established.

But now we understand, for the first time, that it was staff's intent that those five units be taken out of this box where it tells us to insert the total low-income units.

If we take it out of these boxes that have our set-asides at 30 and 60 percent, so let's say we put 49 here because that's our total units but we take it out down here where we have our AMFI brackets, we get a big red box that says you're missing units.

So our contention here is that this workbook that was provided in the application was consistent with the language of the QAP, which said that for income averaging you can achieve these points if your 54 percent is calculated on your proposed development.

I would also note that in tab 19 -- this is page 54 of your Board book and this is my last point here -- this is where the applicant chooses between the set-aside method and the income-average method, so up here they can check a box that says we select the set-aside method and in that section there's an asterisk that says, "Applicants electing the 30 percent boost for additional 30 percent units are advised to ensure the units used to support the boost are not included in the units needed to achieve the application's scoring elections. If you go down here where the applicant chooses the income-average method, there's no such asterisk, there's no such warning.

So all of this points to the fact that the language of the QAP, while perhaps intended to lead to a different result, told this applicant to use the total number of low-income units in its proposed development for purposes of calculating the income-average points.

And while we do have this other language in the boost section that says units must be in addition to units required under any other provisions of this chapter, well, there are no specific set-asides required for income averaging.

So that's the conclusion that I'm asking you to draw, that Section 11.9(c)(1) of the QAP requires an applicant to set aside a certain number of low-income units to receive points, but if you're using the income-averaging method, which is different, the QAP does not require an applicant to set aside a certain number of low-income units to receive the points, it simply requires an applicant to hit a certain average number, which this developer did. The difference in the two methodologies is evident in the way that TDHCA set up the application form, and that is why we are asking you to please grant this appeal.

MR. VASQUEZ: So let me ask. So your contention is that the Department's intent and the explicit language in the rules about addition to the units doesn't have any bearing and that's just because you used the averaging?

MS. BAST: We have to follow the plain language of the rule, and there are two different rules here.

MR. VASQUEZ: Exactly. I agree with you exactly, we have to follow the language in relation to units required in the other provision. The other provision is the averaging.

MS. BAST: Right. And the other provision --

MR. VASQUEZ: So where are the additional units?

MS. BAST: The averaging does not require a certain number of units, whereas, if we were using the set-aside method, there would be additional required units, and so that -- we talked a lot about this, the set-aside method and the income-average method are a little bit of an apple and an orange, and we tried to put them in the same pie, and I don't think we quite got there in this round.

And so in that case where the applicant believed that it was following the language and the direction of the application form, it believes that it should be entitled to the appeal.

MR. GOODWIN: Any other questions?

Marni, I have a question. How many applications do we have in this kind of situation?

MS. HOLLOWAY: This one is a unicorn.

MR. GOODWIN: This is it?

MS. HOLLOWAY: This is the only one that's done this. This is the only application that's done income averaging and pledged the units for boost.

MR. GOODWIN: Okay. Thank you.

MS. BINGHAM ESCAREÑO: I mean, I guess I have a question, Mr. Chair.

It's the unicorn, but could anybody else have aspired to be a unicorn, or did this one specific circumstances make it the only one that could have possibly tried to do this?

MS. HOLLOWAY: My assumption is that if this application was able to access the boost through any of the seven or eight other ways to get to boost, they would have done that.

MS. BINGHAM ESCAREÑO: All right. I feel we're going to hear some other sides.

MR. GOODWIN: I suspect we have someone who wants to speak against this appeal? Just kind of a sneaky suspicion I had.

MS. BINGHAM ESCAREÑO: First, are you a unicorn?

MR. McMURRAY: Absolutely.

MR. ECCLES: Or do you aspire to be a unicorn?

MR. McMURRAY: That as well, that as well.

My name is Brad McMurray, and I'm the vice president of Prospera HCS, which is a nonprofit affordable housing provider, and surprise, surprise, we're the developer of the Village at Nogalitos in San Antonio.

We are going to be displaced if this appeal is granted, and you know, it's kind of tough because I've been doing this for quite a while, and you see people come up and in one item they're saying that, hey, it's a special circumstance, and then they get up at the next item and say, hey, enforce the rule.

So I don't want to be a hypocrite, and I know nobody else wants to be one, but when I look at this, this is really actually a pretty simple thing. We think that with all these complexities that actually the correct decision is to deny the appeal, and it's simple.

I don't want to repeat what Marni did but I want to highlight some things that she had that talks about, you know, that this basis boost, if you use the units to get the basis boost, that they've got to be in addition to units required for any other provision.

Well, there's no requirement for a set-aside, but what the applicant did was say we want to get some points and to get those points we're required to have these 30 percent units in there. Now, that's fine.

You know, she mentioned too, in an eloquent way, that if they had taken these units out, then the Excel spreadsheet wouldn't have worked and there would have been a red box, and it's like, well, that's pretty convincing, and then also that there was no asterisk. Well, it said it over here but because it wasn't said over here, then it must not apply. That's all reasonable.

But let me offer you something else. You know, actually, Mr. Flores is somebody that is an excellent developer and a very intelligent person. I believe he was up here last meeting talking about how the developer had made a mistake.

Y'all were in a very deep discussion about studs and 18-inch walls and what applied and this and that, but then he came up and very eloquently said, Hey, the developer made a mistake; if they'd have had fewer units, they could have had the threshold size of the unit and gone on.

Well, I'm going to propose to you today that instead of all this complicated stuff, if you had increased -- instead of having five 30-percent units for one and five 30-percent units for the other and then 39 at 60 percent, if you had taken five more units and made those 30 percent units, you wouldn't have an issue.

Well, you may have had a bit of an issue because your income would have been a lot lower, you're doing a 49-unit project for elderly and you need that boost and you also need the increased income that they're going to get if you grant this appeal.

Now, versus my project -- which I'm obviously biased about -- is 78 units. Instead of a million two for 78 at $24,000 a unit in tax credits, you're just getting a million four for 78 affordable units. And so from that standpoint, I see this as a very clear decision to deny the appeal.

MR. GOODWIN: Anybody that wants to add something new that speaks in favor of the appeal?

MR. FLORES: Thank you for the opportunity. My name is Henry Flores.

As Brad pointed out, I am the competing developer, and I return the compliment to Brad. Almost everyone in here who is a developer is a very skilled professional and is trying to do the best they can to help poor people in Texas, and they should all be commended for their efforts, as should you.

This is a simple matter, we're not wrong, we're right.

(General laughter.)

MR. FLORES: We are the unicorn.

Marni talked about the rules being unclear. They're not clear. We filled out the application exactly the way we were told in training to fill out the application, exactly the way the application suggested, and we turned it in.

To speak to something that Mr. Vasquez said, we do have the additional 5 percent units, we disagree with their interpretation. We think if we had submitted our appeal sooner -- and that's because we didn't appeal because this is a late deal being underwritten -- if staff had had time to read this carefully, they would have come out in our favor.

They didn't make a recommendation because they know there's no clarity on this issue. There's three things, there's rent, there's income, and there's boost that you can add points for.

When we talk about additional units, we have additional units. There's nine deals in the state of

Texas who tried to use income averaging, brand new, it's a great technique. The last president who revised the Tax Code was Ronald Reagan. He started this program, a great program, one of the best programs in federal government.

This president revised this program and added some wonderful things to this program, including the flexibility we're discussing today, but it's brand new. I'm not surprised that the staff's rules don't have any clarity. All the states in the country are grappling with how to write these rules. We followed the rules, the rules were not clear.

We set aside 5 percent for rent, the additional units that she keeps referencing, we did set aside. The 5 percent for boost is additional ones. Nine deals had these units for income averaging. The other eight guys set aside 10 percent, we set aside 20 percent, we did set aside an additional 10 percent.

Why would we not follow this rule? Because if we had another 10 percent at 30 percent, it would only have cost us .7 percent of the proceeds. This is a $14 million deal. If we had done what they think we should have done, we'd only be losing $100,000 in proceeds. I don't care about $100,000 when I have a $14 million deal.

They didn't clarify the rules properly. We explained why. If you fill out the application the way she suggests, you get the little red box. It says total units 49. We didn't hold five back. We're committed to doing the best we can for people in Texas, we're not averse to providing units.

The reason this rule was established by this president is one of my greatest frustrations, is when a family walks in and they're $5 over the income and I have to turn them away. This rule allows me flexibility. If that person comes in with $5 over, I can house her. I've just to be careful housing this guy with $5 less. It gives us flexibility to serve our communities more effectively.

Only nine people tried because it's tough, it's a tough thing that we're being asked to do. We volunteered to do it because it's the right thing. It's not the right thing for rules not to be clear. For people to use the rules exactly like they're written, the plain language of the rule, and to be turned down, it's not right.

One other assertion that staff can try to verify because, again, out of respect for my colleagues, I believe that if we are funded, as we should, that through the collapse they are also funded, so the City of San Antonio would not lose a deal. But I'll let the experts explain that.

Thank you for your time, I appreciate it.

MR. GOODWIN: Any questions for Mr. Flores?

(No response.)

MR. GOODWIN: Is there somebody else that wants to speak and add something new that's opposed to this appeal.

MR. LUCAS: My name is Ray Lucas with Lucas and Associates, and I'm going to keep it real simple.

Again, it has to do with setting aside units for the 30 percent boost and you can't use them anywhere else, and if you have a spreadsheet that sends a flag out, you call the TDHCA and you ask them why is this happening. You don't call the TDHCA because you can use the answer to your benefit. So that's mine.

MR. GOODWIN: Any questions of this gentleman?

(No response.)

MR. GOODWIN: Anybody else? Marni, would you come back up?

Any questions for Marni?

MS. RESÉNDIZ: You know, I do have a question, but not for Marni. Maybe it's all the developers in the room, so everyone answer the question, okay, all the developers.

(General laughter.)

MR. GOODWIN: I think the chair is going to rule that you need to be a little more specific. Are you asking them to approach the podium?

MS. RESÉNDIZ: No.

So as a developer -- I'm trying to think like one -- and I don't know what the rule is, this new rule that the Trump Administration just put in that gives them the flexibility. Can we anticipate more of these applications then coming through? Because if that's the case, then looking at the rule.

MS. HOLLOWAY: I will speak for the group. I would expect that we will see more income-averaging applications as the community becomes more comfortable with the concept.

As with anything new that we have put into rule, there's always tweaks, there's always changes, there's always, oh, we should have done this this other way and this is this unintended consequence and this is something that we need to fix. So I would say that it will be clearer in the next QAP.

The rule regarding the units for boost has been there for quite a while. The intent is not to have the income-averaging rule negate any of the other rules that are about deeper affordability or more skewing.

MS. RESÉNDIZ: Okay. Thank you.

MR. BRADEN: When I read this as far as the background -- and maybe you can help -- obviously there's a tension and somewhat of a conflict between two of our rules. The 11.9(c)(1)(C)(i) says, "The average income for the proposed Development will be 50 percent or lower." Development is uppercased. Is Development defined in our process?

MS. HOLLOWAY: It is a defined term.

MR. BRADEN: In this case it would include all 49 units?

MS. HOLLOWAY: Yes.

MR. BRADEN: See, when I looked through this, and again, when I read this initially, reading it as a lawyer, I read that set-aside and I don't immediately think, oh, that applies to income averaging.

You know, you read the income-averaging rule and you're like, yeah, I think that almost is stand-alone. And then if our spreadsheet is set up, this box where you click on income averaging and you go through it and it asks for the number in your development and you put it in, it fills out the percentages based on what else you put in the spreadsheet, there's no asterisk.

I mean, I think that's pretty persuasive that maybe that rule and the set-aside don't really conflict because this applies to something else and the set-aside to something else.

So my inclination would be to grant the appeal.

MR. GOODWIN: Would you make a motion?

MR. BRADEN: Sure. I'll make a motion that we grant the appeal.

MR. GOODWIN: Does it have a second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: It is seconded.

Any further discussion? Any additional questions?

(No response.)

MR. GOODWIN: Hearing none, all those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

MR. VASQUEZ: Nay.

MR. GOODWIN: Okay. The appeal is granted.

Before we move into item 8(d), Marni, are you going to present item 8(d)? Andrew, you are?

MS. HOLLOWAY: That's Andrew.

MR. GOODWIN: Okay. We're going to take a short ten-minute restroom break.

(Whereupon, at 10:55 a.m., a brief recess was taken.)

MR. GOODWIN: We will reconvene and start with item number 8(d).

Andrew, you're going to do (d), (e), and (f)?

MR. SINNOTT: That's correct.

MR. GOODWIN: Thank you, sir.

MR. SINNOTT: Thank you. Andrew Sinnott again, Multifamily Loan Programs administrator. And if it's okay with the Board, I'd like 8(d) and (e) together since they're both amendments to the 2019-1 NOFA.

MR. GOODWIN: Okay.

MR. SINNOTT: So 8(d) and (e) are the second and third amendments to the 2019-1 Multifamily Direct Loan NOFA which is our annual NOFA.

The second amendment to the 2019-1 NOFA was presented and approved at the May Board meeting as a proposed amendment that was subject to change based on which 2019 9-percent layered direct-loan deals would ultimately be awarded at this Board meeting and based on underwriting's conclusions.

Based on the 2019 9-percent layered applications that were considered priority at the time, staff believed that $8,401,779 in HOME funds would be sufficient to meet the demand of those 9-percent layered applications that would be eligible for HOME funds. So the second amendment approved in May conditionally added that amount in HOME funds, depending on the final recommendations of the 2019 9-percent layered direct-loan applications. The action being recommended today is final approval of that amount $8,401,779 in HOME funds contemplated in the second amendment.

And then additionally, in order to meet demand of all the 2019 9-percent layered deals being recommended today that requested direct-loan funds and are eligible for HOME, staff is recommending approval of the third amendment to the 2019-1 NOFA that adds $5.1 million in HOME funds.

So all told, that's $13,501,779 in HOME funds being added by the second and third amendments that are exclusively for awards to 2019 9-percent layered direct-loan applications with development sites eligible for HOME funds. The additional $13.5 million in HOME funds will allow us to make nearly $28 million in HOME awards to twelve 9-percent layered deals under the next Board action.

And with that, if you have any questions, I'll be happy to answer them.

MR. GOODWIN: Do I hear a motion to approve staff's recommendation?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Any questions? Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Now we're moving on to item 8(f).

MR. SINNOTT: That's correct. So 8(f) is presentation, discussion, and possible action regarding awards of direct-loan funds from the 2019-1 Multifamily Direct Loan NOFA to 9-percent layered applications.

In this item staff is recommending the following 2019 9-percent layered applications for awards of HOME funds: application 19051 Casa de Mañana, 19179 Riverwood Commons II, 19202 Heritage Heights at Big Spring, 19214 Lakeridge Villas, 19234 The Residence at Alsbury, 19235 The Reserves at Saddleback Ranch, 19236 Tool Cedar Trails, 19238 Franklin Trails, 19304 The Residences at Overlook Ridge, 19332 Avanti at South Bluff, 19365 Heritage Estates at Huntsville, and 19367 Avanti Legacy Bayside.

And a note regarding application 19214 Lakeridge Villas, which recently became a priority application, they had language in the bar that stated up to and to be determined regarding the amount of their award.

REA, Real Estate Analysis staff completed their review of the application yesterday, and that language no longer applies. It's $3.4 million for Lakeridge Villas in HOME funds.

And then the following 2019 9-percent layered applications are being recommended for awards of NHTF: 19053 Waters Park Studios, and 19216 Heritage Heights at Abilene.

So that's a total of $27,945,000 in HOME funds to twelve 2019 9-percent layered applications, and $3,115,000 in NHTF to two 9-percent layered applications, for a total of $31,060,000 in direct-loan awards.

And then to address the Board's earlier concern about ensuring our funds are being utilized throughout the state, these 14 direct-loan awards are being made in ten of the 13 uniform state service regions, so we're getting pretty good coverage statewide with these HOME and NHTF awards.

And several awards are subject to conditions worth mentioning in my presentation, so I'll just talk about some higher level conditions. Because NHTF is subject to federal commitment deadlines and because we anticipate funding them with program year 2017 NHTF, the two NHTF awards, 19053 and 19216, must fulfill all conditions necessary to be able to enter into contracts with the Department on or before February 5, 2020.

In terms of environmental clearance, all 14 recommended direct-loan awardees, since they're all subject to environmental clearance requirements, must submit a fully completed environmental review, including any applicable reports, to the Department within 90 days after this Board meeting, in accordance with the direct-loan rule.

Application 19179 is the proposed second phase of an existing development, which is Riverwood Commons, the first phase. It was previously funded with HOME in 2012.

As a result, the recommended HOME award for application 19179 is contingent upon having a distinct legal description for phase II that does not overlap with the legal description of phase I since we are federally prohibited from investing HOME funds in any of the first phase when we've already invested in that first phase and it's within its federal affordability period.

Recommended awards for applications 19051, 19053, 19214 and 19332 are subject to a demonstration of compliance with all applicable statutes and regulations surrounding relocation, including but not limited to the Uniform Relocation Assistance and Real Property

Acquisitions Policies Act of 1970, and for the HOME awards which are 19051, 19214 and 19332, Section 104(d) of the Housing and Community Development Act of 1974, as a result of the occupied structures existing on the land that they are seeking to acquire.

The applicants must be able to demonstrate such compliance no later than the commitment notice execution date. Furthermore, the direct-loan award letter and loan term sheets will not be issued until applicants have demonstrated compliance with the above referenced regulations.

Additionally, 19214's review for compliance with direct-loan requirements is ongoing, so the direct-loan award is conditioned on completion of review for compliance with the direct-loan requirements. Since it was recently just made a priority application, we are still in the review process on that one.

Ten of the twelve applications recommended for HOME proposed new construction, two proposed demolition and reconstruction, the two applications recommended for NHTF proposed new construction, in total these 14 applications will result in 220 direct-loan assisted units and further support a total of 774 units.

Should the awards under this action be approved, approximately $20.5 million will remain available under the NOFA with approximately $8 million under the supportive housing soft repayment set-aside, $500,000 under the CHDO set-aside, and $2 million under the preservation set-aside, as well as approximately $10 million under the general set-aside.

Currently we have $10 million in requests under review that could potentially be brought back with future awards at a future Board meeting.

With that, if you have any questions, I'll be happy to answer them.

MR. GOODWIN: Do I hear a motion to approve staff's recommendation?

MS. BINGHAM ESCAREÑO: I'll move, I just have a question.

Andrew, we don't have to acknowledge all of those conditions. There may be other conditions along the way as you continue?

MR. SINNOTT: Sure.

MS. BINGHAM ESCAREÑO: So just for our information, those are the ones that we're aware of currently?

MR. SINNOTT: Right, but further conditions may be placed on any of these awards as we get through more reviews of them.

MR. ECCLES: But the awards would be subject to those conditions that have been mentioned here.

MS. BINGHAM ESCAREÑO: Yes.

MR. SINNOTT: Right, exactly.

MR. BRADEN: A technical thing. So in the agenda, 19053 the name is shown as Foundation Village, and in the background you presented you said it was Waters Park Studios?

MR. SINNOTT: You're right. That is a mistake on our part. I apologize. Foundation Village would be the name of the development. The city is correct.

MR. BRADEN: 19053, so it's Foundation Village.

MR. SINNOTT: Correct.

MR. BRADEN: Okay.

MR. GOODWIN: Other questions?

(No response.)

MR. GOODWIN: If not, all those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. SINNOTT: Thank you.

MR. GOODWIN: Moving on to item 8(g), Marni. Sharon is going to do this?

MS. GAMBLE: Yes, sir. It's that time.

Good morning, Board, Mr. Chairman. My name is

Sharon Gamble and I'm the administrator for the Competitive Housing Tax Credit Program.

Item 8(g) is the presentation, discussion, and possible action regarding awards from the 2019 state competitive housing tax credit ceiling and approval of the waiting list for the 2019 competitive housing tax credit application round.

Back on January 9 of 2019, we received 329 eligible pre-applications. On March 1, we received 149 full applications requesting more than $139 million, and there are currently 117 applications eligible for consideration which are collectively requesting credits totaling more than $138 million. Our credit ceiling for 2019 is just over $79 million.

We go through, as you know, a lot to get to this point, and as we review all the applications and get close to the end of our cycle and things kind of start to lay out the way they are, we kind of start to put all the numbers into place.

And when we start that, we first start with looking at our regional allocations. They're developed in compliance with the formula, the RAF that's described in Texas Government, and we publish that prior to the start of the application cycle so that everybody has an idea of what we're working going forward.

We finalize the scoring through application reviews and the applications are sorted based on regional allocations, based on set-aside requirements and based on scores. To make the award recommendations, staff relies on the allocation methodology as set out in 10 TAC 11.6 of the 2019 Qualified Allocation Plan, the QAP.

First of all, as directed in Internal Revenue Code Section 42(h)(5), we make sure that we can meet the 10-percent nonprofit set-aside. We never really have a problem doing that, and we did not have a problem doing that this year.

We then go to the at-risk set-aside, ensuring that at least 5 percent of the allocation is for rural USDA deals. We then recommend more applications in the at-risk set-aside until we reach the 15 percent margin that's required in statute.

Then we go to the highest scoring applications within each of the 26 subregions and select from those applications as long as there are sufficient funds within the subregion to fully award the applications.

And then we have to consider certain statutory limits. In regions containing a county with a population that exceeds 1 million, the Board may not allocate more than the maximum percentage of credits available for elderly developments unless there are no other qualified applications in the region. Urban Regions 3, 6, 7, and 9 are affected by this requirement.

In regions containing a county with a population that exceeds 1.7 million people, the Board shall allocate credits to the highest-scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of the QAP, is located in an urban subregion, and is within the boundaries of a municipality that exceeds 500,000. Urban Regions 3, 6, and 9 are affected by this requirement.

And if the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per applicant rule, the Department will not recommend such allocation. This year two applications, number 19338 Ennis Trails in Region 3 Rural, and 19288 in Region 7 Urban area, were not recommended for this reason.

When there are not enough funds left in a subregion to fully fund the next application, the remaining funds from the subregion are pooled into what we call the collapse.

We have a rural collapse and a statewide collapse. We first run the rural collapse, we find the most underserved rural subregion as compared to the subregion's allocation, then award the next application in line in that subregion.

This rural redistribution will continue through the rural subregions until at least 20 percent of the funds available to the state are allocated to applications in rural areas.

The statewide collapse takes all remaining credits, and like the rural collapse, goes through the subregions based on the most underserved. When there are not enough credits left to award the next application, the allocation ends.

If the Department secures enough credits through credit returns or the national pool to award another application or more applications, then those awards will be made from the waiting list with any determined conditions applied.

The applications being recommended for award are reflected in Report 1, the list that says Award Recommendations. These are all the recommended applications from the at-risk, USDA, and nonprofit set-asides and the rural and urban regional allocations.

For any applications still being reviewed by staff, our recommendations for those applications are conditioned upon completion of that review and any subsequent real estate analysis, previous participation, and Section 811 PRA program reviews.

If those applications are found to be deficient in any way, the applicant would have the same ability to provide clarification or further information and will have the right to appeal any of staff's decisions.

The posted list includes 24 applications which are identified as still being underwritten. Since that list was published, that number has been cut to zero. All applications have the right to appeal underwriting results, and appeals resulting from these final reviews will be handled as required by the rules.

Staff has applied the decision made regarding the appeal heard in item 8(c) and has amended the posted award recommendations in the following ways:

In Region 9 Urban, application 19134 Village at Nogalitos is removed from the recommended awards list, and application 19003 The Legacy at Piedmont is added to the recommended awards list.

All eligible applications are reflected in Report 2. These are all of the applications that have not been terminated or withdrawn. This is a complete list of all applications recommended for an award and the applications not recommended for an award that will comprise the waiting list.

Those recommended for awards are reflected in the recommendation column of this report. Staff has applied the decisions made regarding the appeal heard in 8(c) and has amended the posted award and waiting list in the following ways: The recommended status is removed from application 19314 Village at Nogalitos, and is added to application 19003 The Legacy at Piedmont; application 19134 Village at Nogalitos is on the waiting list.

And Mr. Flores mentioned that there could be enough credits to award that. Staff will go back and we will look at that, we'll look at all of the latest underwriting, whether any cuts to credits were made, so that we can determine exactly how many credits that we have left.

And so if have enough credits left and if the collapse shows that that application is the next application to be awarded, then that award would be made from the waiting list.

By approving the waiting list, you are approving the applications on that list to be awarded by staff should something happen to one of the applications above it or if we receive additional credits that allow us to make additional awards.

Report 3 is the list of applications that are participating in the Department's Section 811 Project Rental Assistance Program. That list has one error that I will correct for the record: Application 19176 in Region

13 Rural is shown as not participating when it should indicate that it will participate by providing program units in the proposed development.

Report 4 is the ceiling accounting summary, which includes funding amounts for the rural and urban regional allocations and for at-risk, USDA, and nonprofit set-asides.

It also shows the rural and statewide collapse, as well as the amount of funds that remain after all awards are made. And there will be edits to that report, as well, after we go back and do a full accounting of the credits that we have remaining.

Report 5 is a summary of conditions recommended by our Executive Award and Review Committee -- I probably didn't say that right; I have EARAC on here -- to be placed on awards as a result of previous participation reviews. Not all applications have conditions; this report includes all of the applications that do have conditions.

Report 6 includes the Real Estate Analysis Division application summaries that were available when the Board materials were posted. Subsequent summaries have been posted to the Department's website.

And Report 7 includes information regarding public input received that has not previously been provided to the Board.

A lot of information. This is that point every year where, you know, we all just kind of breathe a little bit and reflect, and I'd like to just thank everybody. Our review staff, of course, my Fab Five. I have to always start with them because they bring it every year: Ben Sheppard, Elizabeth Henderson, Liz Cline-Rew, Nicole Fisher, and Shannon Roth.

I say it every year, and it remains true, they are my rock, they're the hardest working, most dedicated people I know.

Jason Burr, our database administrator -- Fab Six doesn't sound as good as Fab Five, but we could say Fab Six and throw Jason in there. He's an OU fan but we'll let him go in anyway.

Patrick Russell, I don't know how we ever got through cycle and rules before Patrick joined us. I mean, it's just great to have him and appreciate his help.

Our great loan staff, Andrew, Cris Simpkins, Maria Espinoza, and our newest addition, Alena, not Elena, Alena Morgan, have been there to help us out in any way they could.

Our newly named Director of Multifamily Bonds, Teresa Morales, is always very helpful and an important part of our team.

And of course, Marni Holloway, our dear leader. She's smart, she's confident, she's decisive, and we couldn't ask for a better leader for our division.

And it's not just Multifamily that does this. This program kind of sucks the air out of everything that we do at the Department -- you know that, I don't have to tell you that -- but there's so many other divisions and folks at the agency that we could not do this without.

And I'm not going to name all of them, but the Compliance Division, Policy and Public Affairs, the Real Estate Analysis Division, they got all those reports and that was amazing. Tom Cavanaugh led that group through that; Brent did too, of course, but Tom did all the work.

(General laughter.)

MS. GAMBLE: Our Finance and Administrative Support staff that, God, we bug them with mailings and checks and stuff and they get it done every year.

Our Housing Resource Center, Information Systems Division -- who Curtis Howe is retiring; Curtis, congratulations on your retirement, we'll miss you.

Our Programs Division, led by Brooke, and they include our 811 team and our data management staff, who we say what would happen if we do this and they just run all this data and come up with maps, and it's awesome what they do.

Our Legal team, led by Beau Eccles, just being the wonderful people that they are. And everybody that works so hard and you see people eating at their desk and eating things like macaroni and cheese for breakfast and power bars and protein shakes for lunch, yeah, it gets a little crazy and then we get to come here and do all this on this last day.

And I would be absolutely remiss if I didn't acknowledge the support of our acting -- who has been our acting executive director, David Cervantes, who I honestly believe didn't let that acting label -- okay, I'm not going to get emotional here -- didn't let that acting label slow him down at all.

He learned everything that he needed to learn about this program quickly, and he asked questions and he listened to our answers and had great respect for the staff and for what we do. And I thank you for that.

MR. CERVANTES: Thank you so much. I appreciate it.

(Applause.)

MS. GAMBLE: And this Board, of course.

I'm proud to report today that with this action, the Department, along with our partners in the development community, are going to put over 5,500 affordable units of housing on the ground for working

Texans, and over 5,000 of those will be newly constructed units, and that's something for us to celebrate today.

With that, staff recommends approval of the recommended awards and the waiting list, as amended, for the 2019 Competitive Housing Tax Credit application round. I can answer any questions that you have.

MR. GOODWIN: Do I hear a motion to accept staff's recommendation?

MS. RESÉNDIZ: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MS. RESÉNDIZ: May I make a comment?

MR. GOODWIN: Sure. Comments or questions?

MS. RESÉNDIZ: I believe Sharon's emotional display says everything about David. No, it's great. I'm glad I'm not the only crier.

David, you did such a great job, and I'm certain that you impacted more than Sharon.

Beau, we want to see you cry.

(General laughter.)

MR. GOODWIN: Any other questions or comments?

MR. CERVANTES: Mr. Chairman, may I make a comment?

MR. GOODWIN: You may.

MR. CERVANTES: I'm not sure if I'll have an opportunity again to publicly say some words, but first off, I want to begin with my chairman and the rest of the Board members.

I want to thank each and every one of you for providing me the opportunity to serve in this capacity. It's been a complete honor and the highlight in my career thus far, and so I'm very appreciative of the opportunity.

The same thing goes for the Office of the Governor in terms of providing this same opportunity for me to serve. Public service is what it's about, and I'm very proud of what we've accomplished in this period of time.

And I, too, wanted to thank all of you out there in the crowd and possibly listening in today on live stream. You know, it's not a one-way street, it's us working in tandem and collaboratively to achieve the many goals of TDHCA.

And today is a perfect example as we try to bring culmination to the tax credit cycle, but it's in all phases and all disciplines and everything that we try to do for the State of Texas to make it a better state and continue to improve and meet the always changing demands that are out there.

So I want to thank all of you, the stakeholders, I think I've mentioned to others, you know, just embracing me during this period of time. I really appreciate that.

And like I said, the success of the agency, we don't do it alone, we do it in partnership with the many relationships that we've built throughout the state, and you guys are key to everything that we do and all the success.

And last but not least, the true champions for everything that happens here at TDHCA -- and I wish I could take the credit, but I will always be indebted to the staff of TDHCA, each and every one of them, and Sharon, I think you've covered most of the divisions of the agency.

But for those of you back in the office, I want you to know -- and like I said, I don't know if I'll get another opportunity to speak publicly -- but I'm thankful to everybody sitting back at the office, thank you to all of the staff that's here.

A special thanks to my executive staff who stood side by side with me, educating me, providing me guidance, and just working side by side to accomplish the many things that we've been able to address over the last few months. I will always be in indebted to each and every one of you, so I'm highly appreciative.

And I've always said TDHCA is the number-one state agency in the State of Texas, and I have no doubts at any point now. I believe that's been confirmed completely in my mind. So I'm very appreciative. They are the true champions, and they're the ones that deserve all of the credit for the success of the agency.

So with that, I'll pause, and thank y'all very much.

(Applause.)

MR. GOODWIN: Okay. We have a motion on the floor and a second. If there's no further discussion --

MS. GAMBLE: Before you go to a vote, we had gotten some word that there might be people coming to speak on this item. I don't see anybody sitting here, but I wanted to make sure of that.

MR. GOODWIN: I'd heard that same thing, but no one came up when I asked for that, so we're going to call for the vote.

MS. GAMBLE: Okay.

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. It passes.

(Applause.)

MR. GOODWIN: So we are the point in our agenda where we'll accept public comment for future Board meetings. Anybody that wants to come up and make public comment?

(No response.)

MR. GOODWIN: If not, I'll entertain a motion to adjourn.

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: We're adjourned.

(Whereupon, at 11:33 a.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: July 25, 2019

I do hereby certify that the foregoing pages, numbers 1 through 115, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE: July 30, 2019

(Transcriber)

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