

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

September 7, 2017  
9:00 a.m.

MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

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ROLL CALL	
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CONSENT AGENDA	
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b) Presentation, discussion, and possible action on Board action authorizing of Chair to conduct performance review, and establish salary of Executive Director	
LEGAL	
c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Southdale Apartments (HTC 92179 / CMTS 1090)	
d) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Autumn Oaks of Corinth (HTC 01144 / CMTS 386)	
e) Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning related properties, Enchanted Oaks (HTC 70082 / CMTS 911) and Lively Oaks (HTC 92043 / CMTS 1042)	
f) Presentation, discussion and possible action on a final order in the matter of Texas Department of Housing and Community Affairs v. DeCarlo and Veletta Coleman; State Office of Administrative Hearings ("SOAH") Docket No. 332-17-2472.HCA	

## HOUSING RESOURCE CENTER

- g) Presentation, discussion, and possible action on a draft amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan

## HOME AND HOMELESS PROGRAMS

- h) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA")

## TEXAS HOMEOWNERSHIP

- I) Presentation, discussion, and possible action on the Single Family Mortgage Loan and Mortgage Credit Certificate (MCC) Programs Participating Lender List

## COMMUNITY AFFAIRS

- j) Presentation, discussion, and possible action on the Section 8 Program 2018 Streamlined Annual Public Housing Agency ("PHA") Plan for the Housing Choice Voucher Program and update on revisions to the Section 8 Administrative Plan

## ASSET MANAGEMENT

- k) Presentation, discussion and possible action regarding a material amendment to the Housing Tax Credit Application ("HTC") Application and a change in the ownership structure of the Development Owner, Developer, and Guarantors prior to issuance of IRS Form(s) 8609 13608 Decatur-Angle Apartments Fort Worth
- l) Presentation, discussion and possible action to approve a material amendment to the Housing Tax Credit ("HTC") Land Use Restriction Agreement ("LURA") and Resolution No. 18-001 relating to the Second Amended and Restated Regulatory and Land Use Restriction Agreement 05613 Providence Mockingbird Dallas
- m) Presentation, discussion and possible action regarding material amendment to the Housing Tax Credit Application 16034 Conrad Lofts Plainview

- n) Presentation, discussion and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for City Square Apartment Homes  
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#### RULES

- s) Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter F, Compliance Monitoring, §10.610 concerning Written Policies and Procedures and §10.613 concerning Lease Requirements and directing that they be published in the *Texas Register*

- t) Presentation, discussion, and possible action on proposed new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, and directing that it be published in the *Texas Register*
- u) Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance ("TBRA") General Requirements, and directing their publication for public comment in the *Texas Register*

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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS	207
EXECUTIVE SESSION	none
OPEN SESSION	--
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P R O C E E D I N G S

MR. GOODWIN: I call to order the Board meeting for the Texas Department of Housing and Community Affairs, September 7, 2017.

We'll begin will roll call. 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: Present.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: We have a quorum, and we will begin with Tim leading us in the pledge.

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

MR. GOODWIN: Before we ask for a motion to approve the consent agenda, we have a few items that are going to be pulled, item 1(p) 17413 Flora Lofts, and item 1(q) presentation, discussion and possible action on determination notices for Palladium Glenn Heights.

Does any Board member have any other item that they want to pull from the consent agenda? Anybody in the

1 public have anything they want pulled, the staff have  
2 anything they want pulled?

3 (No response.)

4 MR. ECCLES: Mr. Chair, by pulled, on Flora  
5 Lofts, at least, that's not being removed from the agenda,  
6 it's just being pulled from consent and being moved later.

7 MR. GOODWIN: Right. And in fact, also we're  
8 doing the same with Palladium Glenn Heights. Right,  
9 Marni?

10 MS. HOLLOWAY: Yes.

11 MR. GOODWIN: So both of these items will be  
12 taken outside of consent for approval.

13 If not, I'll take a motion to approve the  
14 consent agenda as modified.

15 MR. BRADEN: So moved.

16 MR. GOODWIN: So moved. Second?

17 MS. THOMASON: Second.

18 MR. GOODWIN: All in favor say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: We have a resolution recognizing  
21 October as National Energy Awareness Month. Michael, is  
22 that something you want to address?

23 MR. LYTTLE: Yes, sir. The resolution can be  
24 found in our board book, it reads as follows:

25 "Whereas, the U.S. Department of Energy has

1 designated October as National Energy Awareness Month;

2 "Whereas, the Weatherization Assistance  
3 Program, the nation's largest residential energy  
4 efficiency program, was established by the U.S. Department  
5 of Energy in 1976 to make homes more energy-efficient,  
6 safer, and healthier for those with low and moderate  
7 incomes;

8 "Whereas, the Texas Department of Housing and  
9 Community Affairs administers a Weatherization Assistance  
10 Program, funded with both U.S. Department of Energy funds  
11 and Low Income Home Energy Assistance Program funds, which  
12 is operated by a network of community organizations,  
13 nonprofits and local governments;

14 "Whereas, the Texas Weatherization Assistance  
15 Program has injected millions of dollars into communities  
16 to improve thousands of homes, thereby helping Texans,  
17 including many of whom are elderly, disabled, or families  
18 with young children, conserve energy and reduce utility  
19 costs;

20 "Whereas, the Program conducts computerized  
21 energy audits and uses advanced diagnostic technology,  
22 investing as much as \$7,212 in a home and providing an  
23 array of improvements that include weather stripping of  
24 doors and windows; patching cracks and holes; insulating  
25 walls, floors, and attics; replacing doors, windows,

1 refrigerators, and water heaters; and repairing heating  
2 and cooling systems; and

3           Whereas, weatherization efforts contribute to  
4 the state's economic, social, and environmental progress  
5 by creating jobs; prompting the purchase of goods and  
6 services; improving housing; stabilizing neighborhoods;  
7 eliminating carbon emissions; and reducing the risk of  
8 fires;

9           "Now, therefore, it is hereby resolved, that  
10 the Governing Board of the Texas Department of Housing and  
11 Community Affairs does hereby celebrate October 2017, as  
12 Energy Awareness Month in Texas.

13           "Signed this Seventh Day of September 2017."

14           MR. GOODWIN: Do I hear a motion to approve the  
15 resolution?

16           MS. BINGHAM ESCAREÑO: Move to so resolve.

17           MR. GOODWIN: Second?

18           MR. VASQUEZ: Second.

19           MR. GOODWIN: Moved and seconded. All in favor  
20 say aye.

21           (A chorus of ayes.)

22           MR. GOODWIN: Any opposed?

23           (No response.)

24           MR. GOODWIN: So it is passed.

25           We have a couple of distinguished guests in our

1 midst today that I'd like to recognize. First, State  
2 Representative Eddie Lucio, III, and Mayor of Harlingen  
3 Chris Boswell. Glad to have both of you. Thank you for  
4 attending. Oh, I apologize, State Representative Oscar  
5 Longoria.

6 So we're going to take up item 7(a) first.

7 MS. HOLLOWAY: We're going to do that later on.

8 MR. IRVINE: So we're just going straight  
9 through the agenda.

10 MR. GOODWIN: We're going to take 7(p) Flora  
11 Lofts first. We need a break before Flora Lofts.

12 MR. IRVINE: Would you please come to the  
13 microphone and clarify any changes in the agenda order?

14 MS. HOLLOWAY: My apologies, we had some  
15 confusion. Marni Holloway, director of Multifamily  
16 Finance.

17 The first item we'd like to take up is 7(a) in  
18 deference to our guests that are here this morning.

19 MR. GOODWIN: And that's Baxter Lofts?

20 MS. HOLLOWAY: Yes.

21 MR. GOODWIN: And, Brent, you're going to talk  
22 about that first?

23 MR. STEWART: Yes, sir.

24 Brent Stewart, Real Estate Analysis.

25 Item 7(a) is the presentation, discussion and

1 possible action on an appeal under 10 TAC 10.901 for  
2 application number 17010 Baxter Lofts in Harlingen.  
3 Baxter Lofts is a proposed 24-unit adaptive reuse of a  
4 nine-story historic building in downtown Harlingen.

5 I should point out that none of what we're  
6 going to talk about here has anything to do with the  
7 merits of revitalizing this building, it has to do with  
8 some technical aspects of the application and the  
9 underwriting.

10 During underwriting, Real Estate Analysis  
11 determined that the property condition assessment filed  
12 with the application, dated February 20, did not meet the  
13 requirements of 10 TAC 10.306(a) which are the guidelines  
14 and rules for the property condition assessments. Instead  
15 of immediately denying the application, the program issued  
16 an administrative deficiency on July 12 to provide the  
17 applicant an opportunity to submit a compliant PCA report.

18 In response, the applicant submitted a supplement to the  
19 original PCA, dated 7/17/17, which staff also determined  
20 failed the requirements of the rules. Subsequent to that,  
21 Underwriting issued an underwriting report which denied  
22 the application.

23 A little background. The PCA is a critical  
24 component of the application on things like rehabilitation  
25 projects and adaptive reuse projects. Unlike new

1 construction transactions where the underwriter has a  
2 multitude of data that can be used to cost a new  
3 construction transaction, each rehab development, each  
4 adaptive reuse development is very specific, very unique,  
5 has its own rehab plan, it's own scope of work, it's its  
6 own thing, and so the underwriter has zero ability to cost  
7 out one of those transactions without the PCA report. It  
8 is the document that tells staff here's what the scope of  
9 work is in enough detail to understand it and here's the  
10 cost of that scope of work.

11 So part of that is the outgrowth of  
12 understanding the scope of work and the cost is under REA  
13 rules we're supposed to determine financial feasibility,  
14 and from there we're also to determine the amount of tax  
15 credits to award to a transaction, and that responsibility  
16 comes from IRS Code Section 42(m). Without that cost  
17 information in a way that we feel confident is the number  
18 to be underwritten, we're unable to meet the rules and  
19 we're unable to meet the responsibilities that we have  
20 under Section 42.

21 So first, before we get into the specifics of  
22 the rule violations, I think there's some things that I  
23 need to share with you regarding some other issues.  
24 First, generally the PCA lacks information, detailed  
25 information about the scope of work. I put the PCA and a

1 supplement to the PCA in your board materials.

2 First, there's a major lack of information  
3 regarding some asbestos, lead-based paint and potential  
4 lead in the plumbing of the building. These are certainly  
5 big to us, certainly big health and safety concerns, and  
6 we would expect to see a significant amount of discussion  
7 about asbestos and lead-based paint and lead in the  
8 plumbing in the report. The original PCA only stated that  
9 the presence of these things was probable and that a Phase  
10 II study should be performed, and that comment is on page  
11 16 of the revised PCA.

12 We don't expect the PCA report provider to go  
13 and do testing for asbestos or lead; they're not an  
14 environmental consultant, we don't expect them to do that  
15 research. But we do expect is that they have a good  
16 enough understanding of what potentially could be in that  
17 building to be able to say here's how much it might cost  
18 to abate the building of the asbestos or the lead. In  
19 this case, there was no indication at all about the  
20 seriousness of the problem of the asbestos. The report  
21 did not talk about where the asbestos was, was it all over  
22 the building or was it localized to a specific part of the  
23 building, how much of it might be there, what the cost  
24 implications were to abate it, was it a \$50,000 issue, was  
25 it a \$500,000 issue. We had no way of knowing, zero, it

1 was unknowable based on the PCA.

2           Additionally, there were no pictures inside  
3 that building to show us where the asbestos might be. In  
4 fact, there were no pictures of the interior of the  
5 building at all. As a result of this, combined with other  
6 issues in the report, we basically came away with no  
7 confidence that that budget was described well enough for  
8 us to rely upon to issue an underwriting report. And  
9 again, to kind of highlight the absence of information,  
10 the entire environmental section in the report was two  
11 sentences, one of which was the asbestos and the lead was  
12 probable.

13           So we raised that issue with the applicant and  
14 said we have these concerns, and with other concerns that  
15 we kind of talked through with them, we issued the  
16 administrative deficiency and said, Go fix it. They came  
17 back with a revised PCA with the same comment that the  
18 asbestos and lead was probable but provided no more useful  
19 information in that report about the asbestos and lead.  
20 It did in the budget provide money, \$88,000 for the  
21 asbestos and \$25,000 for the lead for abatement of those  
22 two items, but again, we didn't know where it was, how  
23 much of it it was, et cetera. So that was in the budget.  
24       We didn't know how that money was estimated, we didn't  
25 know if they had talked with an environmental person,

1 there was just no information in the report. All of that  
2 is on page 36 of the revised PCA.

3 So we published the underwriting report with a  
4 do not recommend based on the lack of information about  
5 the asbestos and the lead in the building. So what's most  
6 disturbing is post-publication of that underwriting  
7 report, we found out from the city manager of Harlingen  
8 that the asbestos had already been abated, it was abated  
9 in 2015 which was much earlier than either of these PC  
10 reports were dated. And again, there was no information  
11 about the asbestos, there was obviously no information  
12 that it had already been abated.

13 On questioning the report provider about the  
14 asbestos and the money being put into the budget for  
15 abatement of this stuff, it was clear that the PCA report  
16 provider didn't know that the asbestos had been abated, at  
17 least that's what it looks like from the report itself.  
18 So I think there's some issues there with respect to what  
19 was in that PCA versus the reality of the conditions on  
20 the ground.

21 There are other significant concerns outlined  
22 in your board material related to the budget, the overall  
23 lack of information in the report, but to underscore and  
24 illustrate the concerns about it, PCA reports are  
25 generally pretty extensive documents, and granted, they're

1 probably more extensive on a rehab development than they  
2 are on an adaptive reuse development, but there's still  
3 pretty comprehensive reports. For example, they're  
4 supposed to outline what codes and conditions relate into  
5 it, are there code violations that are going to be fixed,  
6 how are you going to fix they, what are they, how does the  
7 scope of work fix those, what does that cost. There are  
8 items like that in the report, and the report just  
9 basically says all code violations will be fixed. There's  
10 no tie from that statement to what is it in the scope of  
11 work that you're going to do to fix the code violations.  
12 Again, no information at all.

13           So again, PCA reports are pretty long,  
14 extensive, and so not that the number of pages tells how  
15 good a PCA is or not, because they're going to be  
16 different, you may have PCAs that are 400 pages long  
17 because they have all the research that they did, all of  
18 the discussion, the notes of conversations, the interviews  
19 that they did with the folks at the city, with other  
20 folks. It's documented in the report what those  
21 conversations were and what that person said regarding  
22 that building.

23           This report, the entire original report, was 23  
24 pages long. Three of it were the cover, the transmittal  
25 letter and the table of contents, five of it was resume

1 information about the provider of the report, eight pages  
2 of it were pictures of the outside of the building, there  
3 were 13 pictures, that leaves seven pages for narrative to  
4 discuss the scope of work on a nine-story historic  
5 rehabilitation deal that I don't understand how an  
6 underwriter was going to get a full understanding of the  
7 scope of work of that deal and be able to tie it to the  
8 adequacy of the budget.

9           The revised PCA that came in after the  
10 administrative deficiency in large part was a  
11 rearrangement of the information in the original PCA  
12 report. We had provided to the applicant an example of a  
13 PCA report that was done in accordance with ASTM, which is  
14 kind of a standard that's used for PCA reports. I went  
15 out on the web and just grabbed one from a commercial  
16 retail center and said, Here is one, not saying you have  
17 to do that, not saying that that's what it's going to look  
18 like, but here is an example. So the revised one that  
19 came back had a revised table of contents, it had the  
20 information more organized according to the ASTM, but  
21 there wasn't a lot of additional information or narrative  
22 or description of that scope of work for us to rely on

23           They did include a page that kind of outlined I  
24 guess you could call it the scope. For example, it would  
25 list 24 toilets, 24 sinks, 24 lavatories, stuff like that,

1 and then there was a budget that's on a TDHCA form that  
2 tied to those line items. The problem was there was no  
3 description in the report about those items and the dollar  
4 amounts associated with those items were not clear. The  
5 toilets, lavatories and sinks were a thousand bucks  
6 apiece, and so we were unclear what that meant, is it just  
7 the toilet, is it the punch-out to get the plumbing to the  
8 toilet, you know, what was it. We had no information  
9 about what that was.

10 So 10.306(a) is in our underwriting rules and  
11 it lays out the actual aspects of the rule that the PCA  
12 report is supposed to meet, and I'm not going to go  
13 through them all. They're outlined in your book, but I  
14 think there's a couple of them that are important to  
15 highlight. One of them I mentioned previously is a review  
16 and documentation of any violations of any applicable  
17 federal, state or local codes, developing cost estimates  
18 to take care of those code violations. The report just  
19 simply states that all violations will be fixed.

20 There's a require that the PCA assess to the  
21 extent to which any systems or components must be  
22 modified, repaired or replaced in order to comply with any  
23 specific requirements of the housing program under which  
24 the development is being proposed. So there should have  
25 been a tie between the scope of work and the QAP and the

1 Department's rules stating specifically how this  
2 development is going to meet those rules and the amount of  
3 money it is going to take to meet those rules.

4 Another requirement is -- and I don't need  
5 questions on this one because this a Megan issue, a Megan  
6 question -- relating to accessibility issues. Again, the  
7 report simply states that the building will meet all  
8 accessibility requirements. There's some narrative about  
9 how high the switches have to be and the turning radiuses  
10 in the kitchen and some things like that, but that's only  
11 a smart part of the accessibility of a building. So  
12 there's kind of three subsets of that that relate to  
13 accessibility. And again, 10.306(a)(6) is the operative  
14 section of the rule that allows the underwriter to tie the  
15 scope of work to the budget so that the underwriter can be  
16 confident that that is the number to underwrite to that  
17 allows us to determine the amount of tax credits to award  
18 to the project.

19 So I'm happy to answer any questions that you  
20 have, and again, I don't think any of this relates to the  
21 merits of the development itself. Underwriting is not  
22 saying anything with regards to the merits of the  
23 development itself. This PCA did not meet the  
24 requirements of the rule, the underwriter was not able to  
25 underwrite, even after administrative deficiency was

1 issued, to underwrite the application. And that's the  
2 presentation.

3 MR. GOODWIN: And staff's recommendation is?

4 MR. STEWART: To deny the appeal.

5 MR. GOODWIN: To deny the appeal.

6 MR. STEWART: Right.

7 MR. GOODWIN: Any questions for Brent?

8 MS. BINGHAM ESCAREÑO: I have a question just  
9 regarding the timeline. So our board book said that the  
10 PCA was basically the same PCA that was provided with the  
11 2016 application with some minor revisions.

12 MR. STEWART: That's correct.

13 MS. BINGHAM ESCAREÑO: How far did that one  
14 get? What did you guys do with that one?

15 MR. STEWART: So Baxter was not underwritten on  
16 that deal. They submitted some other applications that  
17 were awarded in 2016. They were also adaptive reuse  
18 transactions. They submitted those with essentially the  
19 same form of PCA and the same information within that PCA  
20 about those transactions. We missed it. In the haste to  
21 finally get everything 2016 underwriting report done last  
22 year, we missed it. That doesn't mean that that's a pass  
23 on the rules or that this report needs to conform to the  
24 rules.

25 MS. BINGHAM ESCAREÑO: So there was a PCA in

1 2016 that was not really -- that didn't meet standard  
2 either and it slipped through, but are you saying it's  
3 from the same applicant or the same architect or the same  
4 developer?

5 MR. STEWART: All of it. So there was the 2016  
6 report filed with that application. The 2017 report, that  
7 was dated in February, was basically an update to the 2016  
8 report, and then the administrative deficiency was issued,  
9 and then July 7 the revised PCA came in. In between  
10 there, there was some discussions with them about issues,  
11 some questions about the transaction, but that's what we  
12 had.

13 MS. BINGHAM ESCAREÑO: In the board book it  
14 says we issued the administrative deficiency on the 12th  
15 of July, they submitted a revised one on the 19th. Did I  
16 get that, or no?

17 MR. STEWART: It was on the 19th; it was dated  
18 the 7th.

19 MS. BINGHAM ESCAREÑO: And what was the  
20 turnaround time on that? If we issued the administrative  
21 deficiency on the 12th, how much time did they have to  
22 like materially go back and get a more thorough  
23 assessment.?

24 MR. STEWART: Seven days is the clock.

25 MS. BINGHAM ESCAREÑO: I don't have any other

1 questions.

2 MR. GOODWIN: Any other questions?

3 (No response.)

4 MR. GOODWIN: Before we hear comments, I would  
5 like to entertain a motion to listen to comments regarding  
6 this issue.

7 MS. BINGHAM ESCAREÑO: I'll so move.

8 MR. GOODWIN: Moved? Second?

9 MR. VASQUEZ: Second.

10 MR. GOODWIN: All in favor say aye.

11 (A chorus of ayes.)

12 MR. GOODWIN: Any opposed?

13 (No response.)

14 MR. GOODWIN: I want to remind you if you're  
15 wanting to come up to speak to please sign in and we're  
16 going to adhere to the three-minute rule.

17 MS. ANDRÉ: Good morning. My name is Sarah  
18 André. I'm here to speak on behalf of the project.

19 At issue here is not whether this project met  
20 the rules. Rule violations are not the case; we met the  
21 rules. At issue here is whether or not TDHCA had enough  
22 information to underwrite this deal. I think you're going  
23 to hear testimony from a number of people, that's because  
24 we're very passionate about this project. It goes above  
25 and beyond meeting all the scoring criteria. We were the

1 number one scoring deal in Region 11 with 156 points, but  
2 it truly furthers the mission of the Department which is  
3 to improve the quality of life and achieve better  
4 communities in Texas, and this project really does that.

5 By way of introduction, the developer in this  
6 case, MRE Capital, has extensive experience with this type  
7 of project. They have eleven historic projects under  
8 their belt; all of those projects are bigger than the one  
9 we are talking about today. They get glowing  
10 recommendations from the communities they work in; they  
11 definitely know what they are doing.

12 The PCA report providers, Mike Klefner and Jim  
13 Holub are both here today. They, between the two of them,  
14 have done more than 600 of these reports in multiple  
15 states; they've never had one rejected, not in Texas, not  
16 in any state in the nation. The developer and the design  
17 team and the city are all intimately familiar with this  
18 building. There have been 14 site visits from the team to  
19 the building over the time.

20 And from Brent's perspective, you heard about  
21 one report. What he has left out is that we submitted an  
22 environmental site assessment which would cover all kinds  
23 of things, in addition to the PCA. You have accessibility  
24 certifications from the architects, and a number of other  
25 assurances about this project.

1           Further, I'd like to state that this is not a  
2 rehab project, this isn't some garden apartments that  
3 we're going to put new cabinetry in and new carpet and  
4 call it a new deal, this is gut rehab, it's adaptive  
5 reuse, it is basically new construction inside a historic  
6 shell. PCAs are intended to give you information about  
7 rehabilitation. They are useless in this case. When you  
8 are doing all new construction, you don't write a list  
9 that says every code violation that you're going to  
10 mitigate with your new construction. This would be all  
11 new wiring, all new plumbing, all new systems, all new  
12 interior walls. I mean, there's nothing in there that is  
13 salvageable. I don't think a 100-page report, a 10,000-  
14 page report detailing that would have provided the  
15 information that was needed.

16           Further, the rules did not change. The very  
17 first thing I did when I heard that we had a deficiency on  
18 this was I thought I missed something, and I went and  
19 looked and word for word they were exactly the same.

20           It's going to be very difficult to wrap up.  
21 May someone donate their time to me?

22           MR. GOODWIN: Sure.

23           MS. ANDRÉ: Thank you.

24           The rules have not changed from 2016 to 2017.  
25 The team did submit identical PCAs for two projects that

1 are currently under construction, they were awarded last  
2 year. And I find the idea that the excuse we missed it is  
3 good enough for TDHCA but it's not good enough for an  
4 applicant appalling.

5           You know, you have got a very long list from us  
6 in your board report going point by point about how we  
7 believe this met the requirements of the PCA, so I'm not  
8 going to go through that. What I want to talk to you  
9 about is how the underwriting team had many opportunities  
10 and ways to determine the costs on this. You know, you  
11 heard that they had zero ability to determine the costs,  
12 but you know, they have many other means at their disposal  
13 which they use all the time, because I'm familiar with  
14 these, I do all kinds of projects and I get these  
15 questions and provide this information. They could use  
16 their extensive database of projects that have been  
17 developed in Texas.

18           You know, Mr. Stewart has extensive contacts in  
19 the construction industry, he used to be a developer, he  
20 has a lot of knowledge about these things, and he does  
21 talk to those contacts, I know that he does. They have  
22 online resources at their disposal. They could have  
23 looked at other projects submitted this year, and I know  
24 that they do that, comparative analysis, because I get  
25 questions about, hey, this other project had XYZ costs,

1 why is yours different. Our costs per square foot are  
2 almost identical to another project, a historic adaptive  
3 reuse rehabilitation project in Longview this year. We're  
4 literally maybe two dollars a square foot off of those.

5 And you know, I just want to emphasize, once  
6 again, is really for rehab. This is not rehab, it is a  
7 complete new construction inside a shell. And I think for  
8 us we just felt like the Department kept changing its tune  
9 about why they didn't like the project. We went through  
10 numerous questions about the underwriting on this deal,  
11 including the structure, the operating costs, the  
12 staffing, talking about the numbers in this project, and  
13 then at the eleventh hour in July we received this  
14 deficiency. The deficiency was vague, it said, Hey, your  
15 PCA isn't sufficient. The only thing I have, other than  
16 the example that Mr. Stewart sent us -- which was very  
17 kind -- is what the rules say, and we went point by point  
18 through those and tried to make it match. I really had no  
19 way of knowing.

20 After we were denied, we were told that there  
21 were concerns with the roofing, the HVAC, the asbestos.  
22 All the Department had to do was issue a deficiency if  
23 they truly wanted to know about those issues and we could  
24 have answered those. I believe that the PCA was deficient  
25 and at issue is the project is doable and feasible, it's

1 very doable.

2 Thank you so much for your consideration today,  
3 and I'll let the other speakers have a turn.

4 MR. GOODWIN: Any questions?

5 (No response.)

6 MS. BAST: Good morning. Cynthia Bast from  
7 Locke Lord, representing the applicant.

8 As you just heard from Mr. Steward and from Ms.  
9 André, each rehab, particularly each adaptive reuse is  
10 unique, and therefore, the PCA that is presented for that  
11 particular development must suit that particular  
12 situation. And as Ms. André said, the applicant believes  
13 that the provided a PCA that is fully compliant with the  
14 rules. If you go to 10.306, you see six categories that  
15 require analysis and discussion. The underwriting report  
16 says that the PCA was deficient in these categories and  
17 gives examples of the deficiencies, but if you look at  
18 their appeal, which is on page 208 of your board book  
19 supplement, you will see that they addressed each and  
20 every one of these deficiencies and identified where the  
21 item was or how it could be found in the PCA that was  
22 presented.

23 The underwriting report goes on to say that in  
24 order to grant this appeal that the Board must waive the  
25 requirements of Section 10.306 with regard to PCAs, and

1 the applicant disagrees with that. If the PCA does  
2 contain the items required by the plain language of the  
3 rule, then the Board doesn't need to waive anything to  
4 grant this appeal, rather they just need to instruct staff  
5 to address any of their questions that they have about the  
6 PCA through the administrative deficiency process. And as  
7 you heard, there was one administrative deficiency issued  
8 that basically said. This is not what we want, fix it.  
9 With more opportunity to talk about the specific items of  
10 concern through administrative deficiencies, which would  
11 be appropriate to this kind of development, I believe that  
12 the questions could be addressed.

13 Thank you.

14 MR. GOODWIN: Any questions?

15 (No response.)

16 MR. GOODWIN: Thank you, Cynthia.

17 MR. SERNA: Good morning. My name is Dan  
18 Serna, the city manager for Harlingen. Thank you for your  
19 time and thank you for hearing us out.

20 I can tell you that we've been working on this  
21 project, I've been with the City of Harlingen now going on  
22 28 years, and as long as I can remember, we've been  
23 talking about this nine-story building that needs to be  
24 rehabilitated and put back in service. It's a beautiful  
25 building in our downtown that needs to be re-energized and

1 put back in play.

2 I want to address the asbestos. When we had  
3 the opportunity to take over the building and purchase the  
4 building about four years ago, we knew as a city that in  
5 order to make it appealing and feasible to undertake a  
6 project like this, we were going to have to find a private  
7 partner to come in and help with this renovation. So what  
8 we did was we took on the responsibility of abating the  
9 asbestos in the building, so we performed a full  
10 environmental on the building and removed all the  
11 asbestos-containing material. That was done in June of  
12 2015.

13 Inclusive of that, as part of that project we  
14 also removed the asbestos-containing material on the roof.

15 I know that's one of the items in the underwriter's  
16 report. So when we removed the asbestos-containing  
17 material on the roof, we had to put a new roof in place so  
18 that, of course, you don't get water damage inside the  
19 remaining building, so we went ahead and put a polymembrane  
20 roofing system as part of that project, and we spent about  
21 \$144,000 on that abatement process. So I wanted to  
22 address that because I thought that was important. I saw  
23 that in the underwriter's report and I wanted the Board to  
24 know that we did that to make it more appealing for a  
25 private partner to come in and help us.

1 I can tell you that this project is vital to  
2 our downtown, the renovation of this project is vital to  
3 our downtown, and without private assistance from a  
4 private partner and without the low income housing tax  
5 credits, this historic structure will remain as is for a  
6 long time to come, and we'd really like to get this back  
7 in play, and we ask for your help and for your approval of  
8 the appeal.

9 Thank you.

10 MR. GOODWIN: Thank you.

11 Any questions?

12 MR. VASQUEZ: I do have a question. So just to  
13 reiterate the asbestos material have already been abated.

14 MR. SERNA: Is gone. I have a binder where we  
15 not only abated all the asbestos-containing material, we  
16 also hired a third party consultant to do the air quality  
17 monitoring during the abatement process, and then we also  
18 filed the necessary certification with the Texas  
19 Department of Health once it was completed. All those  
20 components were finished in 2015.

21 MR. VASQUEZ: And I was going to save this  
22 question till the end, but since it's on the same topic,  
23 the lead-based paint probability, that's being addressed  
24 because you're stripping out everything and basically  
25 taking it out to the shell.

1           MR. SERNA: This project is a complete gut  
2 rehab, even the windows are going to have to come out, so  
3 you're going to end up essentially with a brick exterior  
4 shell and new construction inside completely. There are  
5 no usable parts. I've been in this building several  
6 times. There are no usable components that exist in the  
7 building right now, especially after the asbestos removal.  
8       We went as far as removing the boiler in the basement  
9 because it contained some asbestos insulation, so that's  
10 as far as we went, and that was not an easy task. So we  
11 did that to make it more appealing, and we're fortunate  
12 that we did find a developer like MRE Capital, Interstate  
13 Holdings to come in and take this challenge on, something  
14 we really want to do.

15           MR. GOODWIN: Any other questions?

16           MS. BINGHAM ESCAREÑO: I have just a followup  
17 question. It really goes to Sarah's comments, but now  
18 that you've made these. So one of the observations about  
19 the PCA was that, you know, it just had the couple of  
20 sentences on the lead-based paint and asbestos, but given  
21 what you said and what Sarah said, so the PCA looks like  
22 it pretty much focused on the infrastructure, the overall  
23 exterior of the building. As city manager, since you had  
24 already done all the pre-work on the interior, plus you  
25 knew it was a complete gut project, when you guys saw the

1 PCA, did you think that it was appropriate because it was  
2 really focused?

3 I know there some photos where there's some  
4 weaknesses in the concrete at the base of one of the  
5 corners of the building, or something like that. Was your  
6 thought, hey, the main focus of the PCA would be the  
7 actual structure and not necessarily all the interior  
8 issues because you had already corrected the asbestos ones  
9 and you knew the rest of them would be taken care of  
10 through the gutting of the interior?

11 MR. SERNA: That's a great question, and I'll  
12 be honest with you, I did not see the PCA prior to it  
13 being submitted. So I'm going to be truthful, I did not  
14 see it, and so I wasn't aware until we received the denial  
15 that that was the issue, and then I chimed in saying,  
16 well, in 2015 all that stuff was done. Now, us and the  
17 developer, we had talked about that, they knew that, and  
18 somehow it didn't make it into the report. But I will  
19 say, just like with all construction projects, new or  
20 renovation, you always have a contingency for certain  
21 unforeseens, and I suspect that that's what the architect  
22 did on the probable comment is that he was trying to cover  
23 himself just in case on a nine-story building something  
24 comes up that wasn't caught in the original abatement  
25 process. So you've got to cover yourself.

1 MS. BINGHAM ESCAREÑO: Thank you. Nothing  
2 further.

3 MR. SERNA: Thank you.

4 MR. GOODWIN: Thank you.

5 MAYOR BOSWELL: Good morning. My name is Chris  
6 Boswell, and I'm the mayor of the City of Harlingen. Mr.  
7 Chairman, members of the Board, Mr. Irvine, thank you for  
8 the opportunity to address you all here this morning on  
9 what is a very, very important project for our community.  
10 We have our Harlingen Area Chamber of Commerce executive  
11 director, Chris Gonzales, here this morning and some of  
12 his staff, we have our Economic Development Corporation  
13 director, Raudel Garza here, also to stress the importance  
14 of this project to our community.

15 I want to say three things, really, I want to  
16 make three points. One is in Harlingen we're very  
17 passionate about affordable housing. In the last five  
18 years we've partnered with the Texas National Guard to go  
19 into neighborhoods and tear down old dilapidated houses  
20 and structures which are safety concerns for the  
21 neighborhoods, which are drug hangouts, which are graffiti  
22 magnets, and we've eliminated those structures. And then  
23 we're partnered with Habitat for Humanity to come in and  
24 rebuild new housing in those areas, in those neighborhoods  
25 where we've torn down those hold dilapidated structures.

1 We want to see more affordable housing in our community  
2 and we've taken it upon ourselves to do that, and over the  
3 last five years we've done 156 of those teardowns and  
4 we're working as hard as we can to build new houses in  
5 their place.

6 The second thing I'd like to ask you to  
7 consider is what's been mentioned before. These are the  
8 two property condition assessments for projects that were  
9 submitted by the same developer, by the same architect in  
10 Plainview and Cisco last year, and they're both 28 pages  
11 long, just like the one that was submitted for Baxter last  
12 year. We're not asking you to treat Harlingen any  
13 differently, we're not asking for a special pass, we're  
14 not asking for anything different than to be treated like  
15 these two projects were treated. These two PCAs passed  
16 muster last year and they were funded. They're underway  
17 right now. They're the same kind of '20s era building,  
18 they're old Hilton Hotels. The communities that they are  
19 working in, this developer is working in, are delighted to  
20 have rehabilitated in their downtown area.

21 And finally, I just want to say that this is  
22 one of many projects for you, it's one of many projects  
23 for the staff, one of many projects for most of the people  
24 in this room who do this for a living, and I know that  
25 everyone takes pride in their work and I know that you

1 take each and every project seriously, but this is not one  
2 of many projects for the City of Harlingen, this is the  
3 project of a generation, maybe two generations. We've  
4 been trying to do something with this building for 35  
5 years, and if we can add, to what we've already done in  
6 our neighborhoods, another 24 affordable housing units in  
7 our downtown where they are desperately needed, then this  
8 will be a project that you can be proud of, that our  
9 community can be proud of, and it desperately needs to be  
10 done.

11 I ask you to sustain our appeal and allow this  
12 project to go forward. Thank you.

13 MR. GOODWIN: Any questions?

14 (No response.)

15 MR. GOODWIN: Thank you, Mr. Mayor.

16 MR. Longoria: Good morning, Chairman Goodwin  
17 and members. My name is Oscar Longoria, and I'm actually  
18 the state representative for House District 35 which  
19 encompasses the City of Harlingen.

20 Today I appear on behalf of my constituents and  
21 on behalf of somebody living in South Texas to explain to  
22 you the importance of this project to the area. I commend  
23 Mayor Boswell, the city council, various entities that  
24 have been involved with this project throughout the years,  
25 and it's been a true collaboration with everybody working

1 together.

2 The Baxter Lofts will not only promote the  
3 economic activity in the area, but it's going to help  
4 revitalize the downtown Harlingen area as well. The  
5 remodeling of the house will be beneficial not only to  
6 provide housing to the community, but it's also going to  
7 provide a historical resemblance of the area, so it's  
8 truly a remarkable project. I stand side by side with the  
9 City of Harlingen. I think this is a regional project  
10 where the implications for South Texas can be profound.

11 So I ask for your consideration on this appeal  
12 and I'm open for any questions.

13 MR. GOODWIN: Any questions?

14 (No response.)

15 MR. GOODWIN: Thank you.

16 MR. LONGORIA: I appreciate it. Thank you very  
17 much.

18 MR. LUCIO: Good morning. My name is Eddie  
19 Lucio, III. I'm a state representative for the other half  
20 of Harlingen. Oscar and I share this wonderful city that  
21 we have the honor of representing.

22 I have just finished serving my sixth session  
23 in Austin. I can't believe it's gone by so quickly. But  
24 in those eleven-twelve years I've been working with the  
25 city, I've seen a true passion for local government to

1 make a difference in the community. I do represent House  
2 District 38, I have one of the poorest districts not only  
3 in the State of Texas but in the entire country, so  
4 affordable housing down there, every unit is extremely  
5 critical and vital. I'm fifth generation to be born and  
6 bred and then moved back to Brownsville to make the home.

7 The Brownsville-Harlingen area, we are making  
8 strides in terms of the quality of education. I'm so  
9 proud of the school district of Harlingen. They had a  
10 tremendous summer program, that I went and toured, in  
11 robotics. There are so many projects that are going on  
12 there, both commercial and industrial that are going to  
13 make a difference for the future and quality of life for  
14 our community, but these affordable housing projects are  
15 truly critical.

16 You've heard a lot of information, a lot of  
17 back and forth. I just finished and moved in this week to  
18 a restoration project back in my district, a 100-plus year  
19 old home. We gutted everything, there was nothing  
20 salvageable, no wires, no plumbing, it didn't even have  
21 HVAC, so we added all of that. So if someone were to ask  
22 me what do you plan on doing to get your building into  
23 code, I would have said, Well, we're going to have to  
24 start from scratch. And that would have been the exact  
25 details that I would be able to give. For me to say,

1 well, this existing wiring doesn't meet code because of  
2 XYZ wasn't really relevant to me at the time, so when the  
3 city came in and I met with them, I said, Look, I'm  
4 gutting the whole thing. The only thing that was usable  
5 for me was the shell of the building, and I think we have  
6 the same scenario here.

7           If you've ever been involved, and I know you  
8 have, in evaluating these applications, I'm in my time in  
9 office becoming more and more concerned with how  
10 cumbersome the application process is for people applying  
11 to do either work with the city or seek funding from  
12 government. I just tried to get an SBA loan -- I don't  
13 know if you've ever tried to do to that -- for a project  
14 I'm working on. I spent two months on the project and  
15 gave up and just went the commercial route. These are  
16 government types of applications and they're so cumbersome  
17 that it requires experts in the field that cities like  
18 Harlingen or small businessmen like me just don't have  
19 resources for. So the number of people that can  
20 participate in the programs that we create as state  
21 government or federal government becomes more and more  
22 limited and we make it more and more cumbersome.

23           What is very important to understand is that  
24 this applicant scored very, very high on numerous scoring  
25 criteria, and if it wasn't for this one technicality, this

1 project is considered a good one by this very agency. So  
2 I ask for that consideration.

3 It's interesting to be on this side of this  
4 panel, I usually sit over there. But I thank you very  
5 much for your service. I know it takes away from the work  
6 you do to put food on the table, and we appreciate those  
7 at state agencies who volunteer their time. Thank you so  
8 much.

9 MR. GOODWIN: Thank you.

10 Any questions? Anybody else that wants to  
11 speak?

12 MR. LYTTLE: Mr. Chairman, I have a letter, one  
13 more letter from Senator Lucio, to read on this issue.  
14 It's addressed to you and the Board, reads as follows:

15 "Please accept this correspondence as my full  
16 support to the City of Harlingen on a formal appeal before  
17 you on Housing Tax Credit project 17010 Baxter Lofts.  
18 Because of the critical affordable housing needs that we  
19 have in our region and the importance of this housing tax  
20 credit project in Harlingen, I respectfully request that  
21 the Board consider the substantive merits of the matter  
22 before you and approve the formal appeal.

23 "My longstanding support for this affordable  
24 housing endeavor is well documented with TDHCA and  
25 evidenced through a letter of support I submitted to your

1 Board on May 23, 2016. As I shared with you then, I  
2 restate today, this project is well deserving of the  
3 State's support. I hope that after reviewing the  
4 substantive elements of the appeal that you will agree  
5 that Harlingen's effort to preserve and revitalize the  
6 historic downtown Baxter Lofts property by converting it  
7 into an affordable housing project, which will provide  
8 needed housing to low income families, is a commendable  
9 endeavor.

10 "For these reasons, I respectfully request that  
11 the Board take into consideration the community-wide  
12 support that this project has garnered, especially the  
13 stakeholders, institutions and partners that have come  
14 together in support of this noteworthy effort, such as  
15 Habitat for Humanity, United Way, Harlingen Chamber of  
16 Commerce and the Harlingen Boys and Girls Club, while you  
17 review the substantive merits of the appeal.

18 "In closing, I thank you for providing me the  
19 opportunity to reaffirm my support to the City of  
20 Harlingen's effort to revitalize the downtown area by  
21 transforming the Baxter Lofts property into an affordable  
22 housing project. With the housing needs of my district in  
23 mind, I respectfully ask that the Board focus on the  
24 fundamental elements before you and hope that you see the  
25 appeal in a favorable light.

1                   "Please do not hesitate to contact me if you  
2 have any questions. Sincerely, Eddie Lucio, Jr., State  
3 Senator."

4                   MR. GOODWIN: Thank you, Michael.

5                   MR. VASQUEZ: Mr. Chairman, I'd like to ask  
6 Brent a couple of followup questions.

7                   Just so the Board understands, the fundamental  
8 problem and the staff's concern is that the PCA noted  
9 probable asbestos and lead paint at the site. Is that  
10 really what it fundamentally comes down to?

11                  MR. STEWART: No, sir. It does not materially  
12 meet the requirements of the rule.

13                  MR. VASQUEZ: The PCA report does not meet the  
14 requirements of the rule.

15                  MR. STEWART: That's right. And yes, they did  
16 provide kind of a side-by-side of how the report did meet  
17 the rule, and I'd be happy to go through what they pointed  
18 to as satisfaction of the rule that they're pointing to,  
19 and again, it doesn't meet the requirements of the rule.  
20 Code violations, for example, and maybe you guys can find  
21 other places that it talks about code violations, but  
22 there's a reference to code violations about smoke  
23 detectors, and then somewhere, and I couldn't find it, it  
24 just said there are multiple code violations and that they  
25 will be fixed.

1 MR. VASQUEZ: And again, just help me work  
2 through this.

3 MR. STEWART: Sure.

4 MR. VASQUEZ: We understand that this is going  
5 to be a complete gutting of the building, so even if there  
6 were smoke detectors there, it's all going to be torn out  
7 and replaced anyway. I mean, regardless of the report,  
8 but the reality of the situation is that any code  
9 violation in there is going to get pulled out and  
10 restarted.

11 MR. STEWART: So Ms. André outlined the fact  
12 that -- and I spoke to it earlier -- that each adaptive  
13 reuse transaction, each rehabilitation transaction is  
14 different, different specifications. There's different  
15 parts of the building that are there that may be reused  
16 and not reused; there were aspects of the building that we  
17 were unclear that was going to be reused or not; we had  
18 schematics of the units and the floor plans. There was a  
19 piece of the PCA that referenced wall trim: We observed  
20 that the base trim in the units was present, was likely  
21 original, in most cases in poor condition, the trim should  
22 be replaced with a replication base trim as part of the  
23 rehabilitation. That doesn't tell me that they're keeping  
24 the walls and that trim and they're trying to match the  
25 trim to the existing walls. No place in the report does

1 it say we're ripping out the walls, and we had no  
2 photographic evidence that there were any walls in the  
3 building to begin with.

4           There's a reference to in terms of code as it  
5 relates to accessibility, it talks about some stuff on the  
6 inside of the units with respect to 30-inch work spaces at  
7 the countertops, wall cabinets should be lower. It goes  
8 into those types of requirements, which, great, that's  
9 what we would expect to see in the report. Then it says:  
10 We recommend that the units be located on an accessible  
11 route from the accessible parking spaces at the new  
12 covered parking garage. There is no new covered parking  
13 garage. Later it goes into the fact that there should be  
14 onsite parking, and there is no onsite parking.

15           We are supposed to take a totally self-  
16 contained document that tells the story of that building.

17           If it's a gut rehab, it's a gut rehab and there needs to  
18 be specifications and information about how much stuff is  
19 going to cost. If you look in your board materials at  
20 this document, this is a side-by-side of the budgets that  
21 were submitted between the 2016 application, the 2017  
22 original application and the supplement that was dated  
23 July 7, and I'll point your attention on the second page  
24 for that, if you look across at doors, windows and  
25 drywall, you'll see quite a bit of fluctuation over the

1 period of the cost of those items. Okay. Why? We don't  
2 know. There's probably a good explanation, but it's not  
3 in a self-contained report.

4 MR. VASQUEZ: Well, I just want to make the  
5 statement that I understand, and I believe the Board  
6 understands that the staff needs to operate on that self-  
7 contained report that was submitted in the application,  
8 and it appears to me that the application didn't quite  
9 clearly define the scope of how things were going to get  
10 redone in this case, so I agree with your analysis. Given  
11 the strict letter of our rules and regulations and such,  
12 you're left with no alternative but to recommend denial of  
13 the application.

14 MR. STEWART: Correct.

15 MR. VASQUEZ: So I'm thanking you for following  
16 the rules and continuing with your job, however, I think  
17 this is what the whole appeals process is for is that the  
18 Board can look at the reality of things and the other  
19 extenuating circumstances. Even in the QAP Committee  
20 meeting yesterday, we were trying to fight through the  
21 battle of there is no one size fits all for every type of  
22 project across the state. And in my mind, this is clearly  
23 an exceptional project and from the speakers and the  
24 description of the project, personally, I'm satisfied with  
25 the application and the appeal to grant the appeal, given

1 the information that we've heard today and in all the  
2 materials.

3 MR. GOODWIN: Any other questions for Brent?

4 MS. BINGHAM ESCAREÑO: Yes. So my question  
5 might piggyback on that one, which is you have no choice,  
6 as staff you have no choice but to recommend denial of the  
7 appeal because the PCA doesn't meet the rules. So our  
8 question would be what would the Board need to do -- and  
9 maybe this is a question for counsel -- what would the  
10 Board need to do to allow the appeal and to allow you to  
11 gather the rest of the information you need to completely  
12 underwrite the project? Is that a question for you or a  
13 question for counsel?

14 MR. IRVINE: Before you jump into that, I would  
15 point out that in accordance with the Internal Revenue  
16 Code, when tax credits are awarded, they are underwritten  
17 at multiple stages. The way that I understand it right  
18 now, the amount of the award that is in consideration is  
19 something that the applicant certainly believes is  
20 sufficient to carry out their development. You have not  
21 been able to reach firm and final conclusions on that or  
22 on the ability of them to operate in accordance with their  
23 budget. So if, hypothetically, it were to move forward  
24 from this point, it would be moving forward with some  
25 uncertainty over it. However, after the development was

1 completed and it underwent cost certification, it would  
2 come back for further underwriting, and if it turned out  
3 that too many credits had been awarded, the credits could  
4 be cut. Is that accurate?

5 MR. STEWART: That's accurate for every  
6 transaction, yes. Again, the procedure, the process for  
7 us to determine that award is based on, in part, cost, and  
8 what underwriting is saying is we have a sorely deficient  
9 document to be able to determine cost.

10 MR. GOODWIN: What I hear you, Brent, is you  
11 can't underwrite this based on the information that you  
12 have today, so if we granted this appeal, something would  
13 have to happen subsequent to this to provide you enough  
14 detailed information to do that underwriting, I assume.

15 MR. STEWART: We would accept their cost number  
16 in the underwriting.

17 MR. GOODWIN: The other question I have is was  
18 the \$88,000 for asbestos removal in the original PCA or  
19 was it in the one modified on, I think you said, July 7?

20 MR. STEWART: The \$88,000 for the asbestos  
21 removal was new to the development cost schedule on the  
22 revised PCA.

23 MR. GOODWIN: So the last PCA had this \$88,000  
24 for asbestos removal that was not on the initial PCA. Do  
25 I understand that correctly?

1 MR. STEWART: That's correct. That line item  
2 was not on the original PCA.

3 MR. GOODWIN: It was not on the original PCA,  
4 but after we issued a deficiency, it was added to the one  
5 that was prepared on July. Is that correct?

6 MR. STEWART: That's correct.

7 MR. VASQUEZ: But to clarify, that's an  
8 additional line item, budget line item in the event  
9 there's still some asbestos left.

10 MR. STEWART: Maybe. We don't know. I'm just  
11 saying that the report was deficient and we don't know.

12 MR. GOODWIN: Any other questions for Brent?  
13 If not, does somebody wish to make a motion?

14 MR. BRADEN: I'll make a motion.

15 MR. GOODWIN: Okay.

16 MR. BRADEN: I'll make a motion that the appeal  
17 be granted.

18 MR. GOODWIN: Do I hear a second?

19 MR. VASQUEZ: Second.

20 MR. GOODWIN: Any discussion?

21 (No response.)

22 MR. GOODWIN: All those in favor say aye.

23 (A chorus of ayes.)

24 MR. GOODWIN: Any opposed?

25 (No response.)

1 MR. GOODWIN: The appeal is granted.

2 MR. IRVINE: Might I seize the soapbox for just  
3 a moment?

4 MR. GOODWIN: You may.

5 MR. IRVINE: I think that this really  
6 underscores the incredible complexity of all developments,  
7 but especially things like historic rehabs, and I  
8 sympathize with the challenge of coordinating all of the  
9 pieces, but I implore everyone, when you go forward on  
10 these deals make sure everybody knows what everybody else  
11 is doing and that it all makes it into the final document.  
12 Thank you.

13 MR. GOODWIN: We're going to go back to the  
14 action items and start with item number 3. Tim, do you  
15 want to talk about what item number 3 accomplishes?

16 MR. IRVINE: Sure. And I have Jennifer here to  
17 present.

18 MR. GOODWIN: Thank you, Jennifer.

19 MS. MOLINARI: Thank you, Tim.

20 Good morning, Chairman, Board members.

21 Jennifer Molinari, and I'm the director of our HOME and  
22 Homeless Programs.

23 So item 3 is a recognition by staff that some  
24 programmatic, contractual and other actions may be  
25 necessary with respect to the use of state and federal

1 funds for disaster response and recovery efforts to  
2 provide urgent assistance for qualified persons and  
3 households most impacted by Hurricane Harvey. The item  
4 lays out awarding contracts for discretionary funds, de-  
5 obligating and reprogramming and awarding uncommitted  
6 funds to provide emergency shelter assistance and  
7 providing the necessities of life to eligible households  
8 and individuals using Community Services Block Grant  
9 funds, Low Income Home Energy Assistance Program funds,  
10 and other state and federal funds that may be lawfully  
11 used for such purpose.

12 It also specifically provides authority for the  
13 Department to program or direct state or federal funds  
14 that may be lawfully used for disaster related assistance  
15 to subrecipients serving eligible households and  
16 individuals displaced by Harvey, including but not limited  
17 to using de-obligated and reprogrammed funds available  
18 under the HOME Investment Partnerships Program and the  
19 Emergency Solutions Grants Program.

20 In addition, it directs staff to provide  
21 assistance to affordable rental properties in the  
22 Department's portfolio that have sustained damage as a  
23 result of Harvey that need emergency repairs to enable  
24 them to serve households or individuals, and such  
25 assistance may be made available using the HOME Program,

1 National Housing Trust Fund, and Tax Credit Assistance  
2 Repayment funds.

3           It provides the Department should seek such  
4 state or federal waivers or suspensions or approvals as  
5 may be deemed necessary or advisable to effectuate the  
6 foregoing, as well as providing authority for the  
7 Department to execute, deliver and cause to be performed  
8 on behalf of the Department awards, contracts, loan  
9 documents, land use restriction agreements, and other such  
10 document and instruments in writing as they or any of them  
11 may be deemed necessary or advisable to effectuate the  
12 foregoing, and execute and deliver and cause action on  
13 Department loans and properties in our Single Family and  
14 Multifamily portfolio, granting deferments or other  
15 remedies necessary to assist the Department's borrowers.

16           Any action taken under this authority will  
17 require executive director approval, in consultation with  
18 the Board chair, and subsequent ratification by the Board,  
19 and as such, will be limited to actions that must be taken  
20 only for matters where legal rights, opportunities or  
21 remedies may lapse prior to the Board having the  
22 opportunity to hear the matter at the next meeting.

23           Given the specificity of this action and the  
24 recognition that some elements of potential needed action  
25 may not have been clearly identified in the written action

1 item, we would also like to include in the record the  
2 authority of the executive director to extend benchmarks  
3 or other deadlines which otherwise could only be extended  
4 through Board action which do not violate federal or  
5 statutory restrictions unless waived by the appropriate  
6 federal or state authority, and that this will only be  
7 available to the extent that such action may be taken for  
8 matters where legal rights, opportunities or remedies may  
9 lapse prior to the Board having the opportunity to hear  
10 the matter at the next meeting, and must be subsequently  
11 reported and ratified at the next available meeting.

12 So that was a lot of information and there's a  
13 lot of staff that are also here to answer any questions  
14 you might have. Basically, and in summary, this is asking  
15 for authority to take actions that we might need to take  
16 to immediately help in those ways that we can with the  
17 available resources that we have at our disposal.

18 MR. IRVINE: And while that was very  
19 lawyerly -- and I confess to participating in writing  
20 it --

21 MS. MOLINARI: Can you tell:

22 (General laughter.)

23 MR. IRVINE: -- the bottom line is things may  
24 come along, and I'm sure they will come along, that  
25 require immediate action. They would certainly be actions

1 that would be consistent with law and they would be  
2 actions that this Board would have the full authority to  
3 approve but we just don't have time to wait on posting a  
4 Board meeting. Our scale of values puts health and human  
5 safety first and foremost, and when you're responding to a  
6 disaster, act like it's a darn disaster. So that's what  
7 we're asking for.

8 MR. GOODWIN: Any questions?

9 (No response.)

10 MR. GOODWIN: If not, I'll entertain a motion  
11 to approve.

12 MS. BINGHAM ESCAREÑO: Move staff's  
13 recommendation.

14 MR. GOODWIN: Second?

15 MS. THOMASON: Second.

16 MR. GOODWIN: Moved and seconded. Any other  
17 discussion?

18 (No response.)

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

20 (A chorus of ayes.)

21 MR. GOODWIN: The motion passes.

22 Next, Mark, Internal Audit.

23 MR. SCOTT: Good morning, Chairman Goodwin,  
24 Board members.

25 We had a very productive Audit and Finance

1 Committee meeting this morning. I went over the audit of  
2 Information Systems and I went over the 2018 audit plan.  
3 Ms. Thomason chaired the meeting, and the committee  
4 recommended approval of the 2018 audit plan that is in  
5 your books, so I would like to ask for Board approval of  
6 the 2018 internal audit plan.

7 MR. GOODWIN: Do I hear a motion?

8 MS. THOMASON: Motion.

9 MR. GOODWIN: Motion made. Second?

10 MS. BINGHAM ESCAREÑO: Second.

11 MR. GOODWIN: Any comments? Sharon, anything  
12 you want to share with us?

13 MS. THOMASON: No. Short and sweet.

14 MR. SCOTT: Thank you very much.

15 MR. GOODWIN: Okay. All in favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: It passes. Thank you, Mark.

20 Thanks for the great job you do, you and your staff.

21 MR. IRVINE: While you're giving shout-outs, he  
22 did provide an update on a recently completed audit of  
23 Information Systems, and I've just got to say our  
24 Information Systems team absolutely rocked. We could not  
25 serve Texans as well as we do without the critical

1 infrastructure that they provide. And also, I'd like to  
2 shout-out our information security officer, Jordan. He  
3 really keeps front and center at all times the importance  
4 of safeguarding the information that we have. So thanks  
5 to them.

6 MR. GOODWIN: Our next item, Community Affairs,  
7 Brooke.

8 MS. BOSTON: Thank you, Chair Goodwin and Board  
9 members. I'm Brooke Boston, one of our deputies.

10 This is item 5(a). I'd like to draw your  
11 attention to a revised Board action item that's been  
12 provided to each of you and has been made available to the  
13 meeting attendees, so that should be in front of you as a  
14 handout.

15 As was noted in the original writeup, we had  
16 anticipated that revisions would be needed because this is  
17 related to Hurricane Harvey assistance and we had expected  
18 there would be changes potentially in the areas needing  
19 assistance from the time we posted the book. So I'll  
20 first brief you on just the item overall, and then I'll  
21 mention a few changes from the time that we posted.

22 This item relates to the reprogramming of  
23 several sources of Community Services Block Grant funds,  
24 which we call CSBG, for the immediate responsiveness to  
25 Hurricane Harvey. To refresh you, CSBG is a program

1 funded by the U.S. Department of Health and Human  
2 Services, and typically, 90 percent of the funds are  
3 considered non-discretionary and are provided to  
4 designated eligible entities to reduce poverty, revitalize  
5 low income communities and to empower families to become  
6 self-sufficient. The type of services and programs  
7 supported with CSBG funds typically include case  
8 management, employment and educational services, emergency  
9 assistance and coordinating local assistance efforts.

10 The CSBG funds are disbursed by the Department  
11 through a network of 39 agencies that are designed to  
12 serve all the counties in the state. Staff has identified  
13 two sources of CSBG funds for reprogramming to immediate  
14 disaster assistance. First, one area of the state,  
15 Dallas County, does not currently have an eligible entity  
16 providing services, as they have been removed in  
17 accordance with appropriate federal procedures. We've  
18 been taking steps to identify a replacement provider for  
19 the area, however, their 2016 CSBG non-discretionary funds  
20 for that area in the amount of just over \$3 million are  
21 available. Those funds require obligation by September  
22 30, 2017, so this month, to prevent the possible loss of  
23 those funds to the state. Staff has spoken with U.S. HHS  
24 and they've concurred that our proposal of reformulating  
25 those funds to be used for this activity and putting them

1 towards Hurricane Harvey assistance is an acceptable  
2 proposal.

3           The other source of CSBG funds that we have is  
4 approximately \$575,000 in 2016 and 2017 discretionary and  
5 administrative funds. Under the immense and immediate  
6 needs for Hurricane Harvey, staff is recommending that  
7 those funds, combined totaling about \$3.6 million, be used  
8 for disaster recovery. The funds would be provided only  
9 to CSBG eligible entities and only for delivery of  
10 services in those counties have a FEMA disaster  
11 declaration for individual assistance. Uses of the funds  
12 will be for immediate expenditure relating to direct  
13 assistance for the provision of food, cloths, fuel,  
14 temporary housing, personal items, or other CSBG eligible  
15 activities as needed buy households at or below 125  
16 percent of federal poverty who were directly impacted by  
17 Hurricane Harvey.

18           Because the need for assistance is immediate  
19 and the deadline to expend funds is very short, and at  
20 this time the disaster estimates are not readily and  
21 reliably available yet, the methodology that we've  
22 suggested is as follows: any county with a FEMA disaster  
23 declaration for individual assistance by the close of  
24 business today would be included in our calculation  
25 tomorrow morning. Because there's an immediate need

1 prevalent for the type of assistance in all of the  
2 affected counties, the Department has set a minimum  
3 assistance amount, or essentially a floor for each county.

4 When we had originally tried to calculate things just  
5 based on a formula, some of the counties just got so  
6 little that we felt like that was almost just insulting  
7 for the households that live there.

8 After applying the floor, we then applied a  
9 formula based on each county's proportion of the poverty  
10 population which is typically the way we evaluate CSBG is  
11 based on poverty population. We did that with the  
12 exception of Harris County, we kind of pulled them out of  
13 the calculation. This was to make sure that Harris didn't  
14 eat up all of it. After applying the floor and the  
15 poverty calculation, Harris would get everything that  
16 remained. Doing it that way ensures that each county  
17 receives a sufficient amount to be impactful, while still  
18 directing a large amount of funds to the densest poverty  
19 population in Harris County.

20 The list of counties and amounts in your new  
21 board item is reflective of the county status as of  
22 yesterday afternoon and revised amounts. A table is also  
23 provided that shows you the aggregate amount for each  
24 eligible entity based on the counties in their service  
25 area. If not additional counties are added by the end of

1 the day today, that list before you will be the list  
2 that's approved for the awardees and the amounts that they  
3 would receive. We're prepared to execute contracts  
4 tomorrow and get those out to the network.

5 Now, I'll be the first to tell you that we are  
6 not sure that all of the subrecipients are immediate in a  
7 position to sign right away, although they're prepared to  
8 get the funds out over time. Several of us were talking  
9 before the meeting about the fact that some of the  
10 community action agencies are themselves going through  
11 struggles with their own staffs and trying to just get  
12 their personal lives back in order.

13 Since the time of posting, several revisions  
14 were made: eleven counties were added, one new  
15 subrecipient was added, the total available funds was  
16 reduced by \$100,000, and EARAC approval has been obtained  
17 for the subrecipients, with two of the subrecipients  
18 having conditions placed on their award as noted in your  
19 writeup.

20 On a last note, I would mention that to make  
21 every effort at being transparent with our use of the  
22 money, we have posted today's meeting as a public hearing  
23 opportunity if anyone wanted to come and comment on the  
24 possible reprogramming of funds, so they could do that if  
25 they wanted right now. And with that, I'd just be happy

1 to answer any questions you have.

2 MR. IRVINE: I'd like to offer a comment on the  
3 reprogramming, and correct me if I'm wrong in this. If,  
4 for example, you had an existing CSBG recipient that  
5 served five counties that each got \$50,000 per county,  
6 there would be \$250,000 available in that Community  
7 Service Block Grant's jurisdictional area to expend in an  
8 appropriate manner to assist in IA impacted counties.

9 MS. BOSTON: Correct. And actually to  
10 clarify -- and I'm glad you brought that up -- the case  
11 with most of these is that their whole service area isn't  
12 fully affected, and so let's say if it's a community  
13 action agency with ten counties and four were affected  
14 they're giving whatever the amount listed on the county  
15 list was and aggregated only for use in the four counties.

16 Well, I clarify, only for people affected from those  
17 counties. If, in fact, let's say Jane was in one of the  
18 affected counties and is choosing to move and get  
19 assistance in a county that's not currently designated, we  
20 can still help her.

21 MR. GOODWIN: Any question?

22 MS. BINGHAM ESCAREÑO: Yes, Mr. Chair.

23 Tell me again what was the methodology once you  
24 carved Harris County out and then to make sure that they  
25 did get an allocation?

1 MS. BOSTON: Well, we looked at poverty  
2 population, which typically is one of our key criteria for  
3 CSBG funds, so we identified the poverty population in all  
4 of the affected counties and then figured out each one's  
5 kind of pro rata share of that. We then made sure we  
6 applied a floor of at least 50- for each of them, so if  
7 that pro rata share had been less than 50-, we boosted  
8 them up, and then out of what was left, we took that and  
9 gave it to Harris.

10 MS. BINGHAM ESCAREÑO: I really appreciate and  
11 acknowledge the quick work that you guys did to get some  
12 money out there. I'm overwhelmed seeing 39 counties on  
13 the list.

14 I'll move to approve.

15 MR. GOODWIN: Second?

16 MR. VASQUEZ: Second.

17 MR. GOODWIN: Any other questions, discussion?  
18 Anybody out there want to speak to this?

19 (No response.)

20 MR. GOODWIN: All in favor say aye.

21 (A chorus of ayes.)

22 MR. GOODWIN: Any opposed?

23 (No response.)

24 MR. GOODWIN: Motion passes.

25 5(b), Brooke.

1 MS. BOSTON: Yes. So 5(b), this is actually  
2 just based off what's in your posted board book. This  
3 relates to approval of a recommendation to the governor to  
4 designate an eligible entity to administer the Community  
5 Services Block Grant program in Dallas County.

6 As I mentioned in the prior item, Dallas County  
7 doesn't have a current designated eligible entity to serve  
8 its residents. The provider that previously had been  
9 serving as a CSBG eligible entity was called Urban  
10 Community Centers of North Texas. They were not  
11 performing effectively, and in October 2016, the Board  
12 approved an order to terminate our relationship with them,  
13 and you directed staff to proceed with trying to find a  
14 replacement provider.

15 Eligible entities are actually designated by  
16 the governor, and so the Department identifies an entity,  
17 we'll recommend that entity to the governor after your  
18 approval, and then the governor will actually make that  
19 official designation.

20 In February 2017, the Department released a  
21 request for applications, which is the process we use to  
22 try and find a replacement. In April 2017, before the  
23 response submissions were due, we did receive confirmation  
24 from the U.S. Health and Human Services Department that  
25 the process we had used in terminating UCC was appropriate

1 and sufficiently documented, which let us officially  
2 proceed. In May 2017 we received two responses by the  
3 deadline. One of those submissions did not satisfy the  
4 criteria. The other submission, the Community Council of  
5 Greater Dallas, Inc., CCGD, is a strong Dallas nonprofit  
6 entity with great breadth in providing human and social  
7 services in the area. They full satisfied the threshold  
8 criteria and have also been reviewed for previous  
9 participation requirements and been recommended for  
10 approval from our Executive Board Review and Advisory  
11 Committee.

12 With this action, CCGD will be recommended to  
13 the governor to be designated as the CSBG eligible entity  
14 for Dallas County, and if approved, they will receive an  
15 award of 2017 CSBG funds for Dallas County in the amount  
16 of \$3,236,718. And with that, I'd be happy to answer any  
17 questions.

18 MR. GOODWIN: Any questions?

19 (No response.)

20 MR. GOODWIN: If not, do I hear a motion for  
21 approval?

22 MS. RESÉNDIZ: So moved.

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

24 MS. THOMASON: Second.

25 MR. GOODWIN: Moved and seconded. Any other

1 discussion?

2 (No response.)

3 MR. GOODWIN: All in favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Any opposed?

6 (No response.)

7 MR. GOODWIN: Thank you, Brooke.

8 MS. BOSTON: Thank you for your support.

9 MR. GOODWIN: Item 6(a), Raquel.

10 MS. MORALES: Good morning. For the record, my  
11 name is Raquel Morales. I'm the director of the Asset  
12 Management Division for the agency. Today I will be  
13 presenting item 6(a) which are material amendments and  
14 changes in the ownership structure for two competitive tax  
15 credit applications that were submitted back in 2016. One  
16 is for application number 16352 Commissioners' Corner, and  
17 the other is for 16354 Gonzalez Apartments. I was just  
18 asked by Barry if we could take them out of order and take  
19 Gonzalez first before Commissioners' Corner.

20 MR. GOODWIN: I don't have any objection to  
21 that.

22 MS. MORALES: If that's okay with you guys, I'm  
23 fine with doing that.

24 MR. GOODWIN: Raquel, I had mentioned to Marni,  
25 because I believe staff's recommendation on this is

1 neutral.

2 MS. MORALES: On Gonzalez, it is an approve  
3 recommendation. Commissioners' is a neutral, and we'll  
4 get to that one.

5 MR. GOODWIN: I just ask that you advise the  
6 Board beforehand.

7 MS. MORALES: Sure.

8 MR. GOODWIN: So let's do Gonzalez.

9 MS. MORALES: So Gonzalez Apartments, as I  
10 mentioned, was allocated in 2016 during the competitive  
11 tax credit round. The Housing Authority for the City of  
12 El Paso, or HACEP, as I will refer to them moving forward,  
13 is the applicant. And what they are asking to do in terms  
14 of a material amendment is to significant modify the site  
15 plan which includes a reduction in the number of the  
16 residential buildings from sixteen to seven. They have  
17 also proposed changes to the architectural design of the  
18 development, reduced common area square footage. In your  
19 board book in the board action request there is a table  
20 that kind of gives you a visual of what the application  
21 submitted and proposed at application, what they're asking  
22 to do now on the right-hand side as the amendment.

23 The total number of units for Gonzalez remains  
24 unchanged. They committed at application to build 153 and  
25 it was actually a relocation and one-for-one replacement

1 of existing public housing units from the City of El Paso.

2 They are continuing on and moving forward with the 153  
3 units as originally proposed.

4 In staff's board writeup, it was a quite  
5 verbose writeup, if you will, because we discussed in  
6 detail other changes that were reflected in the amendment  
7 request, including changes to the construction costs for  
8 the development for this amendment and for Commissioners'  
9 Corner. It's a pattern that we've noted with this  
10 particular applicant with amendments that they have  
11 submitted, material amendments that have been brought to  
12 the Board, costs increasing significantly, and so we just  
13 wanted to disclose that to the Board in that board action  
14 request so that they could see the pattern that we're  
15 seeing, and if there were any questions about that.

16 I know that our Real Estate Analysis Division,  
17 at the time that we initially posted this amendment --  
18 which is required to be posted 15 days before this Board  
19 meeting, it did go out as a neutral -- and that was  
20 because underwriting wasn't complete with their analysis.  
21 They had questions about some of the cost increases that  
22 were reflected between application and the amendment. I  
23 think ultimately, though, by the time we posted this in  
24 the board book, the analysis had been completed,  
25 underwriting concluded a feasible transaction despite the

1 cost increases, noted those cost increases, but the  
2 development remains eligible for the tax credit award that  
3 they received previously.

4 One of the bigger things that's going on with  
5 Gonzalez, besides the changes that I've previously  
6 summarized, is that they are adding a new partner, if you  
7 will, into the development owner, the guarantor and the  
8 developer structure. HACEP has acquired quite a bit of  
9 housing tax credit pipeline with our previously awarded  
10 applications, and so in efforts to help them execute and  
11 deliver on those previous applications, they have sought  
12 assistance by adding in other experienced developers to  
13 help them do that. In this case, the addition of Franklin  
14 Development, which is owned by Aubra Franklin, is proposed  
15 to be incorporated and added into the ownership structure,  
16 again, of the development owner added as a guarantor,  
17 added as a developer.

18 I think with Gonzalez, like I said, the  
19 amendment is pretty self-explanatory. They are going  
20 through some changes, material changes, according to the  
21 amendment request, to deal with the changes in the equity  
22 financing that several of our 2016 awardees have mentioned  
23 that they have gone through. At application they had a  
24 price maybe of a dollar or so; after November of 2016,  
25 that all changed and so they've had to deal with the

1 decrease in equity as a result, and so one of the ways  
2 they've been doing that is to redo their deal, value  
3 engineer where they can, or what-have-you.

4 So for Gonzalez Apartments, staff is  
5 recommending approval of the amendment.

6 MR. GOODWIN: Before I ask for a motion,  
7 because we're moving for approval, did you want to  
8 comment? Nobody wants to talk about Gonzalez?

9 MR. PALMER: (Speaking from audience.) No,  
10 sir.

11 MR. GOODWIN: So do I hear a motion to approve  
12 staff's recommendation?

13 MS. BINGHAM ESCAREÑO: Move approval.

14 MR. GOODWIN: So moved. Second?

15 MS. RESÉNDIZ: Second.

16 MR. GOODWIN: Moved and seconded. Any  
17 discussion?

18 (No response.)

19 MR. GOODWIN: All in favor say aye.

20 (A chorus of ayes.)

21 MR. GOODWIN: Any opposed?

22 (No response.)

23 MR. GOODWIN: Okay. So 16354 is approved.

24 Now we move on to 16352.

25 MS. MORALES: Right. And that one is

1 Commissioners' Corner. This one, as you mentioned, was  
2 presented at the time we posted 15 days before the Board  
3 meeting, still is being presented as a neutral. There is  
4 no recommendation one way or the other from staff for this  
5 request.

6 Commissioners' Corner, again, is another HACEP  
7 application submitted during the 2016 competitive round.  
8 They submitted the application under the at-risk set-  
9 aside, and it was formerly submitted under a different  
10 name, Salazar Park. It's not uncommon for developers to  
11 change the name of their developments just to keep staff  
12 on their toes and make sure we know which deal we're  
13 talking about. But it is now known as Commissioners'  
14 Corner.

15 HACEP currently owns several existing public  
16 housing developments. Salazar Park is one of those and  
17 it's an existing 286-unit public housing development. The  
18 application in 2016 for Commissioners' Corner proposed the  
19 relocation and the new construction of 185 of those units  
20 over to an eleven-acre site that's located about ten miles  
21 or so from where the current Salazar Park development  
22 exists.

23 The request before the Board today is to  
24 materially amend this 9 percent application such that the  
25 number of units is reduced by half. They are going from

1 185 units to 93 units. They have also identified other  
2 changes that would trigger a material amendment, according  
3 to our statute and our rule. In your board book on page  
4 485 in the board action request for Commissioners' Corner,  
5 you will also see a before and after the application and a  
6 picture of the site plan, characteristics of the  
7 development that were proposed at the beginning. As you  
8 can tell from that, again, 185 units on eleven acres, 20  
9 residential buildings. Now at application with the 9  
10 percent piece they are proposing to reduce the number of  
11 units and the other items that I mentioned.

12 Now, I should note that there is an agenda item  
13 later on under item 7(e), I believe, under the Multifamily  
14 Finance section, and it is regarding a determination  
15 notice for what is referred to as Commissioners' Corner. T  
16 that agenda item is for the other half of the original  
17 185-unit development. Again, on page 485 in your board  
18 book you'll see on the right-hand side under the amended  
19 site plan there is a grayed out area of the site plan that  
20 isn't there anymore. That shaded area is the piece that  
21 the applicant is now proposing under the later agenda item  
22 7(e) to do as a 4 percent transaction. They've termed it  
23 a hybrid 9 percent/4 percent transaction. And so the  
24 other half of the original 185 units, 92 units are  
25 proposed to be done through that 4 percent application.

1           And I just wanted to point that out because  
2 whatever action you guys take on this amended piece, on  
3 the 9 percent piece, will have some impact on whatever  
4 action you take on that item. And Marni will come up  
5 after I'm done with my presentation to offer some detail  
6 on that other piece.

7           So in addition to the physical characteristics  
8 of the development that are proposed to be changed by this  
9 amendment, the other proposed change is to also add a new  
10 partner into this transaction, as they did with Gonzalez.

11          Versa Development, which is owned by Manish Verma, is  
12 being added to this transaction.

13          Again, as I mentioned, HACEP has taken on a bit  
14 of housing tax credit activity. Just to give the Board  
15 some perspective, since 2014, HACEP has been awarded with  
16 tax credit allocations for 25 developments total. Six of  
17 those have been with competitive housing tax credits, the  
18 9 percent tax credits, and the other 20 have been with the  
19 4 percent noncompetitive housing tax credits. So they've  
20 definitely increased their pipeline in the last two years,  
21 and we expect very soon, if they haven't already, to see  
22 the first tranche of those come online, submit cost  
23 certifications to see at the end of the day what happened,  
24 and I think it's the 4 percents that we should be seeing  
25 coming online.

1           The amendment request identifies the fact that  
2 the equity price dropped since the time of application for  
3 this deal, and in fact, attributes the reason for this  
4 proposed hybrid structure directly related to the equity  
5 adjustments experienced for this transaction. At  
6 application the credit pricing for Commissioners' Corner  
7 came in \$1.02. Currently on the 9 percent piece, the  
8 credit pricing is 88 cents. I believe the credit pricing  
9 on the 4 percent piece is at a slightly higher 95 cents.

10           Also, in your board book a study on page 501, I  
11 believe, you will see a combined sources and uses  
12 comparison that was prepared by our Real Estate Analysis  
13 Division as they were re-evaluating the transaction under  
14 the proposed amendment. As I mentioned, our board writeup  
15 for Commissioners' Corner, similar to Gonzalez, disclosed  
16 the significant cost increases that were reflected in this  
17 amendment at the end of the day. And I'll say that we've  
18 been working with this applicant since March. That's when  
19 the original amendment request came in. It's not what  
20 ended up ultimately before you today. That original  
21 amendment request proposed 185 units on the 9 percent  
22 piece, but through their working through, figuring out a  
23 way, came up with this proposed hybrid structure, and you  
24 have the request before you.

25           So the amendment on the 9 percent piece, which

1 is what I'm speaking to under item 6(a) for Commissioners'  
2 Corner, as I mentioned, proposes to reduce the development  
3 size in half; however, what doesn't change on the 9  
4 percent piece is the amount of the tax credits. In other  
5 words, the applicant, when they came in originally in  
6 2016, proposed to develop 185 units, requested \$1.5  
7 million in annual housing tax credits, and received that  
8 award. They are now requesting to keep \$1.5 million in  
9 annual housing tax credits to develop half the units, or  
10 93 units.

11 In terms of the amount of tax credits on the 9  
12 percent piece, \$1.5 million is the maximum amount that an  
13 application could have received, similar to a credit cap  
14 per applicant that we impose on the tax credit round. The  
15 reason that we do that, the reason that we have these caps  
16 in the competitive tax credit program is because it  
17 provides the Department with an efficient distribution  
18 among developers and among the state. This is a limited  
19 housing tax credit resource that we have; we don't have an  
20 unlimited amount to give to every transaction that  
21 requests funds, and so the cap on a per-deal basis and the  
22 cap on a per-applicant basis helps the Department to  
23 efficiently allocate those credits and spread the wealth,  
24 if you will.

25 I think that it's important to note during the

1 discussions that I know I have had with the applicant's  
2 representative on Commissioners' Corner as well as the  
3 current lender, Citibank, I tried to wrap my head around  
4 what is being requested here. As we do with all of the  
5 amendments, we work with our owners on these tax credit  
6 deals when they come in and they seek to change materially  
7 a transaction for whatever reason. And so understanding  
8 that in their amendment request they cited the fact well,  
9 you know, our equity just fluctuated so much that we had  
10 to figure out a way how to make this deal continue to  
11 work.

12 One of the things that came through the  
13 conversations with the lender was that, while not the only  
14 reason -- I will say that for sure -- one of the reasons  
15 was that this application came in at the front-end with so  
16 much additional basis to support more than the \$1.5  
17 million in annual credits, and so one of the reasons that  
18 they proposed this structure, this hybrid, is to allow  
19 this applicant to access additional credits that they  
20 would not otherwise be available to get under the 9  
21 percent tax credit program -- again, competitive program.

22 Everybody coming into that program knows that there's a  
23 limit, knows that there's a cap, and I'm sure that this  
24 applicant and this application wasn't the only application  
25 that came in on the front-end demonstrating more basis to

1 support more credits than what the request was or what the  
2 cap was.

3           And so, you know, their going about the request  
4 in this hybrid structure allows them to, again, keep the  
5 \$1.5 million in annual credits on the 9 percent piece,  
6 albeit to develop half the units, but then also allows  
7 them to access additional equity and additional credits  
8 through the 4 percent application. I think it's an  
9 additional \$538,000 in annual credits on the 4 percent to  
10 do the other half, to do the 92 units, whereas, before  
11 they could do the 185 with the \$1.5-.

12           So like I said, this one, from my perspective  
13 as director of Easement Management, overseeing the  
14 amendments process, working through owners on all sorts of  
15 material amendments. We typically bring amendments to you  
16 guys with an approval, they're usually on consent, you  
17 never really hear me speak in front of you. But this one  
18 was a unique situation, it is a unique structure. I get  
19 what they're trying to do here and I guess the concern  
20 from my perspective, from staff's perspective is the  
21 allocation of the original credit, the efficiency that  
22 we're going to get out of that original \$1.5 million to  
23 develop half the units.

24           I'm sure that the applicant will come up here  
25 and plead their case and explain how at the end of the day

1 we're delivering 185 units, we're doing what we said we  
2 were going to do. And when you look at it from a 30,000  
3 foot level, yep, they are, they are going to deliver 185  
4 units. But with the 9 percent piece, with that limited  
5 tax credit resource, we're getting half the units that we  
6 were originally promised at the front-end.

7 So unless you guys have any questions.

8 MR. GOODWIN: And staff's recommendation is  
9 neutral on this issue?

10 MS. MORALES: Yes. It's presented as neutral.

11 MR. VASQUEZ: A question on the 4 percent, is  
12 it future 4 percent program, they have to apply for that?

13 MS. MORALES: They did. They actually  
14 submitted an application through our 4 percent program,  
15 and I don't know if Marni wants to come up and speak to  
16 it, but they did submit it subsequent to submitting the  
17 amendment request that you guys have on the 9 percent  
18 piece. It was, like I said, a structure that they were  
19 working through and trying to figure out to see how they  
20 could come together. It's the reason why it's being  
21 presented at the same Board meeting; it was really  
22 important for this applicant to present both pieces.

23 MR. VASQUEZ: If we granted the request, are we  
24 approving the additional half million dollars.

25 MS. MORALES: So item 7(e) is also presented as

1 a neutral because of the fact that the 9 percent piece is  
2 coming to you as a neutral. So the recommendation from  
3 staff on item 6(a) on Commissioners' Corner and on item  
4 7(e) with respect to the determination notice for  
5 Commissioners' Corner are both neutral.

6 MR. VASQUEZ: So when we total everything  
7 together for the project, in order for them to get the  
8 same number of units that they had promised in their  
9 original application, we need to give them another half  
10 million dollars, roughly, in 4 percent tax credits.

11 MS. MORALES: That is what they have presented.  
12 That's one of the questions when I picked up the phone  
13 initially and talked to Mahesh -- who is going to be here  
14 representing Citibank, the current lender -- my question  
15 from the beginning was: There's absolutely no way this  
16 deal can get done on the 9 percent piece at 185 units? I  
17 was looking for that, like this deal dies. And I don't  
18 know, maybe they'll be able to come and address that.

19 I think what I've heard during the discussions  
20 with Mahesh and Manish both is that, look, we can make a  
21 deal work. But his approach was brought before the Board  
22 for its consideration because, again, additional equity  
23 was there that we couldn't access in the 9 percent and  
24 there was also the piece that HACEP originally in the 9  
25 percent application provided gap funding, I want to say in

1 the amount of \$2 million. And so combined, they're still  
2 providing gap funding, I think that went up to about \$5  
3 million, but they were trying to find a way to not have to  
4 provide as much gap funding maybe that would be needed if  
5 they were to proceed with this 9 percent application, 185  
6 units, versus going this route where it wouldn't be so  
7 much of their own gap funding that they would need to  
8 provide.

9 MR. GOODWIN: And this route is it \$5 million  
10 in gap financing?

11 MS. MORALES: I believe so.

12 MR. GOODWIN: I see some people nodding.

13 MS. MORALES: So I'm looking at the combined  
14 sources and uses, and it looks, again, at the 9 percent/4  
15 percent hybrid combined compared to the original 9 percent  
16 application. It looks like from what I'm seeing here the  
17 gap funding that HACEP was providing originally in the 9  
18 percent was \$2 million, now it's \$5.3 million, strictly on  
19 the 4 percent piece, not on the 9 percent, but when you  
20 look at it combined, their gap funding has gone up.

21 MR. GOODWIN: I'm also under the impression  
22 that the second one, 17431 will not underwrite unless we  
23 approve 16352. Is that accurate?

24 MS. MORALES: I will let Brent or Marni come up  
25 and discuss the piece on the 4 percent. I know just in

1 having discussions internally -- and Brent, if I'm  
2 misstating this, you can come up and correct me -- he has  
3 stated that this 4 percent piece could not move forward  
4 without the 9 percent piece because you have to drive  
5 through that first 9 percent piece to get to the 4 percent  
6 piece.

7 Remember, it was all one development; now,  
8 technically, as they've presented it now, they're going to  
9 have separate legal entities, separate legal descriptions,  
10 separate land use restriction agreements. I think there's  
11 a plan for them to share the common amenities between the  
12 4 percent and the 9 percent. So I believe that the answer  
13 to your question is, yes, if the Board decides not to  
14 approve the 9 percent amendment, I don't know that the 4  
15 percent amendment would be able to stand.

16 MR. GOODWIN: The question in front of us is  
17 the material amendment basically gives this project an  
18 additional \$500,000 tax credit.

19 MS. MORALES: Through the 4 percent application  
20 it does.

21 MR. GOODWIN: Through the 4 percent application  
22 to get both projects done and for us to end up with the  
23 same number of units.

24 MS. MORALES: Yes.

25 MR. GOODWIN: Other questions? Tim?

1 MR. IRVINE: I actually would frame it at a  
2 little higher level, and correct me if I'm wrong. First  
3 of all, you've got to understand that this is a public  
4 housing authority, and public housing authorities are  
5 required when they destroy units of public housing to  
6 replace the same number of units of public housing. So  
7 regardless of the initial basis surplus situation here,  
8 going and applying to build a smaller number of units when  
9 you're destroying the entire development is not an option  
10 for a public housing authority. So there's the one-for-  
11 one replacement issue.

12 Then you look at the 9 percent credits and you  
13 deal with the changes in equity pricing and so forth,  
14 you've got the available basis, so you create that piece.  
15 That certainly addresses the financial piece, it reduces  
16 the demand on the housing authority to contribute gap  
17 financing from its available cash into that side of the  
18 piece. The other thing that it does that is important is  
19 it's now September and the cliff of placed in service is  
20 approaching, so it enables them to do half the number of  
21 units facing that cliff instead of all of the units facing  
22 that cliff, then it allows the 4 percent bond side to play  
23 out as it would play out.

24 MR. GOODWIN: Additional questions?

25 (No response.)

1 MR. GOODWIN: I see we have a number of people  
2 that want to speak, so I would entertain a motion to hear  
3 comments.

4 MS. BINGHAM ESCAREÑO: So moved.

5 MR. GOODWIN: It is moved. Second?

6 MS. THOMASON: Second.

7 MR. GOODWIN: Moved and seconded. All in favor  
8 say aye.

9 (A chorus of ayes.)

10 MR. GOODWIN: Any opposed?

11 (No response.)

12 MR. GOODWIN: Okay. We'll start to hear  
13 comments. Again, we're going to keep the three minutes.

14 MR. AIYER: Good morning. Mahesh Aiyer with  
15 Citibank, Citi Community Capital, the lender on both  
16 pieces of the transaction.

17 Thank you, Mr. Irvine. I think you summarized  
18 it well.

19 Thanks, Raquel.

20 Essentially, if you go back to the February  
21 Board meeting, what we were looking at -- and I had  
22 conversations with staff prior to that Board meeting -- is  
23 how do we effectuate -- it was really important for the  
24 housing authority to maintain the number of units, it's a  
25 RAD development, public housing -- how do we maintain the

1 characteristic of it. It so happens, this is unusual in  
2 the sense that there's a lot of excess basis related to  
3 this transaction, that if go back through other tax credit  
4 transactions, you don't typically see the magnitude of the  
5 excess basis.

6           So we've done this in other states, we've done  
7 it quite often, and we had an ability here, since the 4  
8 percent program is not a competitive program, it's an as  
9 of right credit with tax-exempt bonds, it wasn't going to  
10 cost -- we weren't going to displace anybody else coming  
11 in per se for credits, it's not a competitive program. It  
12 was a really equitable way to shift economics over to one  
13 area. The reason why you saw the number of units shifted  
14 over, when you deal with a tax-exempt bond transaction you  
15 need a certain amount of scale within that, so  
16 economically, what the housing authority and Versa  
17 Development did is said, okay, how do we stay within the  
18 characteristics of the 9 percent application -- they still  
19 scored as they would have otherwise scored to maintain the  
20 award -- and how do we shift the economics structurally  
21 over.

22           We worked through and we said, look, I'll do  
23 the financing on my own bucks. We're not securitizing,  
24 doing anything, it's a Citibank balance sheet loan on both  
25 the debt on both pieces and I'm also buying the equity.

1 We're doing it so that we can keep the characteristic in  
2 place, shared amenity agreement, same partners on both  
3 sides, economically the housing authority is still putting  
4 in \$3 million more.

5           There are two things that occurred post-  
6 election. One is not only did equity pricing drop, in a  
7 market like El Paso, which is not a real large CRA market  
8 for bank investors, it dropped further. The other thing  
9 was interest rates went up about 70 basis points higher  
10 than what they are today. The combination of the two  
11 really affected how you would structure economically.

12           Now, could they shift a lower number of units?

13           That's not really practical for what as a housing  
14 authority they have to do. But say they kept the same  
15 number and they went a different route altogether, they  
16 would highly, highly, highly leverage the properties.  
17 Even if they could try to get there, I couldn't see a way  
18 to get there. And we don't just look at something on how  
19 we get in, we look at sustainability over 15 years. So  
20 there's more equity in the project, there's sustainable  
21 debt. Remember, the tax-exempt portion has a lower  
22 interest rate than a taxable, so they were able to keep  
23 debt manageable, more equity in the project, they're still  
24 putting in \$5 million, and they're sticking with their  
25 commitment to build the same number of units.

1 I financed the Tays development across the  
2 street from the original Salazar. It's the same thing.  
3 They've never gone back to have an amendment to reduce the  
4 number of units, maintaining the unit characteristic is  
5 really important for them. So that's why we came up with  
6 this.

7 MR. GOODWIN: Any questions?

8 (No response.)

9 MR. GOODWIN: Thank you.

10 MR. VERMA: Good morning. My name is Manish  
11 Verma.

12 As you know, our amendment request is unique in  
13 its nature and it's come after months of discussion with  
14 our team and the Department, but the premise for our  
15 request is to ensure the full development of 185 units as  
16 originally contemplated in our application.

17 As Mahesh has said and as Raquel has stated,  
18 there's been a fluctuation in the equity markets, I think  
19 we all understand that. And over there past few months  
20 there have been numerous amendments submitted by other  
21 developers for their 2016 applications in order to best  
22 account for this loss in equity, and most, if not all of  
23 these amendments were for either to modify their design,  
24 or two, and most importantly, to reduce the unit count for  
25 their proposed development. All these amendments were

1 supported by staff and recommended for approval by the  
2 Board.

3           So Commissioners' Corner is very similar but  
4 different in one respect in that we are trying to preserve  
5 all the units that we originally submitted, and so if  
6 you'll look at the 9 percent and the 4 percent together,  
7 as stated, there is no change in the number of units,  
8 there's no change in the number of affordable units,  
9 there's no change in acreage, and there is no change in  
10 the net rentable square footage.

11           The other thing I wanted to comment on was the  
12 comment about the amount of credits that are being  
13 allocated for the 9 percent piece, the million and a half  
14 in credits for 93 units. If you look at that metric,  
15 credits per unit, it is at a reasonable level compared to  
16 what other 2016 awards were granted. Is it higher than  
17 average, yes, but there are several applications that have  
18 a higher credit per unit allocation. And if you look at  
19 it further, if you dig deeper, these are big units, we  
20 have two-bedroom, three-bedroom, four-bedroom, five-  
21 bedroom and six-bedroom units, so if you look at it from  
22 tax credits per net rentable square footage, tax credits  
23 per bedroom, and tax credits per households served, we are  
24 at average or below average compared to 2016 awardees,  
25 making it actually a highly efficient transaction even at

1 93 units.

2 And lastly, and going back to HACEP's  
3 contribution, as we know, they have a huge RAD commitment,  
4 they're looking to develop over 6,000 units by the end of  
5 2020, and there's significant financial commitment that  
6 HACEP has to develop all of these units. But they are in  
7 no way curtailing what they originally intended to provide  
8 in the Commissioners' Corner. As Raquel had mentioned, in  
9 the original application they were looking to provide \$2  
10 million in funding, they are now looking at \$5.3 million  
11 in funding for Commissioners', and if you look at Gonzalez  
12 where they were not intending to fund any money in  
13 Gonzalez, there's more than a million and a half in  
14 funding in Gonzalez.

15 So big picture, this amendment is meeting a lot  
16 of these tests, we are preserving all of the units, it is  
17 actually highly efficient, and we believe this amendment  
18 is well submitted.

19 Thank you for your time.

20 MR. GOODWIN: Thank you.

21 Any questions?

22 (No response.)

23 MR. GOODWIN: Anybody have anything new they  
24 want to bring to the table?

25 MR. DELOYE: Good morning. My name is Tom

1 Deloye. I'm with staff at the Housing Authority of the  
2 City of El Paso. Gerry Cichon sends his best; he was not  
3 able to be here, he had some prior commitments. So on  
4 behalf of Gerry and on behalf of my entire team at the  
5 housing authority, we're pleased to have the opportunity  
6 to provide just a few more remarks, and I promise you it  
7 will be less than three minutes.

8           So like you, our business is housing  
9 economically challenged people, these people that look to  
10 housing, and favorably, for themselves and for their  
11 family. Our work provides and fulfills housing for them.  
12 This is a fundamental and foundational need, in my  
13 opinion. Our work also is valued by these people in that  
14 we provide safe and decent housing to the possibly  
15 homeless. So in El Paso we are busy building and  
16 renovating in RAD, as previously mentioned. We are  
17 committed to the conversion of our entire housing  
18 portfolio, over 6,000 units.

19           What's before you with this request is  
20 important because you will assist us in this significant  
21 conversion and in helping us drive towards this  
22 commitment. So your approval today is not only important  
23 to the City of El Paso and vital, it's important to the  
24 housing authority and vital, but mostly, it's important  
25 and vital to the residents, the people today that are in

1 our projects, but also to the people in future years to  
2 come. Because why? Because they will have a place to  
3 call home.

4 Thank you for your consideration.

5 MR. GOODWIN: Thank you.

6 Any questions?

7 MS. BINGHAM ESCAREÑO: Just a comment.

8 Obviously, we've been watching what's going on in El Paso  
9 for a while, and I know that it has required tremendous  
10 work on all parties' part, including staff's, and I  
11 appreciate the commitment that you have to your portfolio.  
12 I don't think that's an easy goal and I'm not sure how you  
13 inherited it, or maybe you were the one that thought of  
14 it, but it's a huge undertaking. We did Blue Flame?  
15 Didn't we do Blue Flame last time around? And I'm from  
16 the Valley from an area that's similar, and I think that's  
17 a huge undertaking, and I commend you for your commitment  
18 to that in the housing authority.

19 MR. PALMER: Barry Palmer with Coats Rose.

20 Thank you, Ms. Bingham. It is a huge  
21 undertaking. When HUD originally came out about four  
22 years ago with the RAD program as a demonstration program  
23 of how they could provide a mechanism for housing  
24 authorities to get access to private capital to repair and  
25 some places replace obsolete public housing, the Housing

1 Authority of the City of El Paso was one of the first to  
2 sign up, and they signed up to convert their entire  
3 portfolio, 6,000-plus units, which together with San  
4 Antonio they're neck and neck as the largest housing  
5 authorities in the State of Texas. It's been a massive  
6 undertaking, they're about halfway through, they've got 24  
7 or so properties under construction, and some completed.

8           When the meltdown in the equity markets came  
9 after the election, we all knew in the industry that we  
10 had a problem, and Tim was at the leading edge of that and  
11 he came to the Board in February and said: All of the  
12 2016 tax credit deals are at risk, they all assumed they  
13 were going to get pricing of over a dollar and now it's  
14 going to be much less, and we need to come up with a game  
15 plan of how we can make some for these work and at the  
16 same time we don't have a lot of money to put into it.

17           So what was suggested, and the Board approved,  
18 was that the agency be a little more flexible in looking  
19 at material amendments than it had in the past, and agreed  
20 to allow some things that previously would have been  
21 somewhat unheard of, like applying for 120 units and then  
22 coming back and saying I only have enough money to build  
23 80. But that's what a lot of folks have done as a way to  
24 make this work.

25           If we look back over the amendments that have

1       come in over the last few months, in many cases people  
2       have reduced the number of units. And if this were a  
3       private developer, that's what they would be doing on  
4       Commissioners' Corner. But when I suggested to HACEP that  
5       that was an option, they said, No way, we've got to build  
6       the full number of units, we're not going to build less  
7       units than we have, we've got to replace all of the units  
8       that are going away from the public housing complex.

9                So we looked at other options that would make  
10       it work, and this was an innovative idea that we talked to  
11       our banker and our developer about to bifurcate the site.

12       I had seen it done in other states, never before here in  
13       Texas. But we haven't been using all of our 4 percent  
14       bond cap for years, we've been underutilizing the 4  
15       percent cap, so here was an opportunity to take an  
16       underutilized resource and use that to make up a gap and  
17       still build the 185 units and not come back and cut the  
18       number of units we were building.

19                So I really think that this has been a good  
20       financing plan to achieve that, and would urge the Board  
21       to approve it.

22                MR. GOODWIN: Any questions for Barry?

23                MR. IRVINE: I have a comment. Barry is always  
24       good at making me sound more articulate than I actually  
25       am, and whatever I did or didn't say is well documented in

1 previous transcripts and Board action items, but as I  
2 recall, the sentiment, it was that we certainly would  
3 encourage people thinking out of the box to save their  
4 2016 deal, we would entertain such concepts as value  
5 engineering, we would look for the possibility that some  
6 of these changes might require material amendments, but I  
7 also have to underscore that the material amendments  
8 process is embedded in statute, and statute specifically  
9 requires the addressing of issues of foreseeability and  
10 preventability as a prerequisite to the granting of  
11 material amendments, so I think that's the issue before  
12 you.

13 MR. ECCLES: And actually, that leads to my  
14 question. I was going to offer to Mr. Palmer the  
15 opportunity to couch the arguments and the discussion  
16 that's been had in terms of the statutory requirements for  
17 the Board to look at, namely, Texas Government Code  
18 2306.6712. The Board is to make its decision on a  
19 material amendment based on a number of factors that  
20 include the question: Would this amendment materially  
21 alter the development in a negative manner, as well as  
22 would this amendment have adversely affected the selection  
23 of the application in the application round? There are a  
24 couple more after that. If you want to hear it now, you  
25 can just run all of the arguments.

1 MR. PALMER: I'll take those two first.

2 MR. ECCLES: Okay, go ahead.

3 MR. PALMER: And I think staff has mentioned in  
4 their writeup that there wouldn't have been any point  
5 change, there wouldn't be any loss of points, so this  
6 application would have gotten selected if they had come in  
7 originally at 95 units for a million five in credits, they  
8 would have scored the same, they still would have gotten  
9 awarded.

10 In terms of the unforeseeability of it, I think  
11 it's fair to say not many folks foresaw that President  
12 Trump was going to win the election, frankly, and none of  
13 us even when that happened realized what an effect it  
14 would have on the equity markets when folks started to  
15 realize that now that the Republicans control all three  
16 branches and they had run on a campaign of reducing taxes  
17 and President Trump had spoken of reducing the corporate  
18 tax rate from 35 to 15 percent, people started thinking  
19 all of a sudden for the first time in November that that  
20 was really going to happen. So that certainly wasn't  
21 foreseen by any of us or any of the development community  
22 when they turned in their applications in March of 2016  
23 that credit pricing would take such a serious hit because  
24 of the election of a new president.

25 MR. ECCLES: The last one of those factors is

1 the beyond foreseeability, could this amendment have been  
2 prevented. In other words, the value engineering, is  
3 there a way that it could have been done without this  
4 amendment.

5 MR. PALMER: Well, as we said a number of  
6 times, the way we could have done this is the way a lot of  
7 the previous amendments you've seen come in is they've  
8 reduced the number of units. That would have been the  
9 other option to complete the project with the credit  
10 allocation that we have. But rather than do that, we've  
11 come up with another option that's not taking anything  
12 away from anybody else, we're not getting any more 9  
13 percent credits, we're getting the same 9 percent credits  
14 that we already have, we would just be getting additional  
15 4 percent credits that for the last number of years have  
16 gone underutilized and been turned back in to the Federal  
17 Government.

18 MR. ECCLES: Thank you.

19 MR. GOODWIN: Thank you, Barry.

20 Any other questions?

21 (No response.)

22 MR. GOODWIN: Since we have a neutral  
23 recommendation by staff, I suspect Ms. Bingham is going to  
24 craft a motion.

25 MS. BINGHAM ESCAREÑO: So I'd like to recommend

1 that the Board approve the material amendment request from  
2 Commissioners' Corner, number 16352, and just in answer to  
3 the question, so in support of the applicant's position  
4 that the factors that affected credit pricing were  
5 unforeseen, that the material amendments don't alter or  
6 affect the development in a negative manner, that the  
7 staff in the staff writeup stated that the material  
8 amendments do not result in selection of threshold  
9 criteria that would have affected the application score,  
10 and that the alternative which may have been to reduce the  
11 number of units is not an option for the Housing Authority  
12 of the City of El Paso. How's that?

13 MR. GOODWIN: That's a pretty nice motion.  
14 Thank you.

15 Can I have a less winded second?

16 (General laughter.)

17 MS. THOMASON: Second.

18 MR. GOODWIN: Motion has been made and  
19 seconded. Any questions? Any additional comments?

20 MR. VASQUEZ: I just would like to make a  
21 question and a comment.

22 This motion that we're voting on now  
23 effectively says that we're going forward with the 4  
24 percent additional amount, because this doesn't work if we  
25 don't do that.

1 MR. GOODWIN: I want to clarify that.

2 MR. VASQUEZ: I understand we have to vote on  
3 it separately, but we're recognizing that.

4 MR. GOODWIN: The 4 percent doesn't work  
5 without this. And Marni, speak to that, if you would.  
6 Didn't you say that staff's recommendation, if we approve  
7 this material amendment, would be to approve 17431?

8 MS. HOLLOWAY: So item 7(e) which is the 4  
9 percent is presented as a neutral based on EARAC and staff  
10 not knowing what the Board's decision would be on the  
11 first part, on the 9 percent piece. And we can talk about  
12 it under that item, but the 4 percent piece would stand  
13 alone financially, which would be required in order for  
14 the basis to be split, it would not stand alone  
15 operationally.

16 MR. VASQUEZ: Operationally, this doesn't work  
17 without us operationally doing the 4 percent as well.

18 MS. HOLLOWAY: I believe the 9 percent doesn't  
19 have the issues that the 4 percent does because the 4  
20 percent piece is in the back of the property and the 9  
21 percent piece includes the community center and the  
22 leasing office and all of those necessary bits.

23 MR. VASQUEZ: Yes. You answered my question.

24 MR. GOODWIN: Does that answer our question.

25 MR. VASQUEZ: That was my question. Now my

1 comment is that just hearing the applicant talk about  
2 cutting the number in half from what was approved on the 9  
3 percent, I was ready to start screaming about -- excuse  
4 me -- hell, no. But given the fact that they are -- and  
5 my understanding I want to clarify -- putting in another  
6 \$3 million of equity, or \$3.3- or whatever it is, to get  
7 the 4 percent \$500,000. Is that really what I'm hearing?

8 So they're not just asking us to cut it in half, they're  
9 putting in a lot more, the \$3 million in equity to get  
10 this extra \$500,000. I just want to make sure I  
11 understand. Is that correct?

12 MR. AIYER: Mahesh Aiyer, Citibank.

13 That's correct. In order to maintain the full  
14 number of units, full intention is we've got the  
15 application ready, we've already got deal calls going,  
16 we're trying to close as closely together as possible on  
17 both pieces. The same number of units, putting in more  
18 money, and it's just split into two pieces of financing,  
19 but operationally they need to go together.

20 MR. VASQUEZ: Thank you.

21 And again, I just want to say for my opinion on  
22 this Board going forward, such a material change as just  
23 the 9 percent alone, effectively cutting it in half for  
24 the same dollar amount, I just think we should push back  
25 hard in the future. However, given that they're putting

1 in more equity, substantially more, I'm comfortable with  
2 going along with the motion.

3 MR. GOODWIN: Any other comments or questions?

4 MR. IRVINE: I'd like to just clarify one  
5 thing. At present, the 4 percent credits, which are tied  
6 to private activity bond cap, are an underutilized  
7 resource, but I've got to just point out to everybody that  
8 they are picking up steam. Teresa Morales may have some  
9 comments on that. And to the extent that the 4 percent  
10 program and the bond program continue to grow, this would  
11 reduce the amount of bond cap that would be available for  
12 carryforward ultimately, hopefully to be re-utilized in a  
13 more aggressive program.

14 MR. GOODWIN: No other comments, I'll call for  
15 a vote on the question. All in favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: It is granted.

20 Raquel, 6(b).

21 MS. MORALES: 6(b) is presentation, discussion  
22 and possible action regarding direct loan terms for 2016  
23 tax credit and direct HOME awards for 16185 Merritt  
24 Heritage and 16210 Merritt Monument. Both of these  
25 applications also submitted competitive tax credit

1 applications under the tax credit cycle, as well as  
2 competitive applications under the 2016-1 Multifamily  
3 Direct Loan Notice of Funding Availability, or 2016-1  
4 NOFA, as I'll refer to it moving forward.

5 The 2016-1 NOFA required that all loans, except  
6 those awarded under the deferred forgivable loan set-  
7 aside, be structured as fully repayable loans at not less  
8 than the terms set out in that NOFA. I'll say with both  
9 of these items, both of these BARS that were posted in  
10 your board book, the recommendation is a neutral, as well,  
11 from staff for both Merritt Monument and Merritt Heritage.

12 So I'll take Merritt Heritage first. The Board  
13 previously approved the change in terms on our HOME loan  
14 for Merritt Heritage back at the May meeting when both of  
15 these items were on the agenda. Ultimately, I think  
16 Merritt Heritage was the only one that hate Board took  
17 action on, and the Board approved to extend the term of  
18 our direct HOME loan from 18 years to 40 years to enable  
19 the applicant to take advantage of FHA financing.

20 Just as a kind of quick background. When these  
21 applications came in originally in 2016, the financing  
22 structure proposed by the applicant included a  
23 conventional first lien loan, as well as our subordinate  
24 \$2 million HOME funds and the tax credit equity. These  
25 deals have not closed on the direct HOME loan with the

1 Department, so while it's presented as an amendment, it's  
2 not something that's happening post-closing, we're still  
3 trying to work through and getting to closing on these  
4 transactions.

5 But the financing structure has changed such  
6 that the first lien conventional loan is now being  
7 substituted with a HUD FHA first lien loan, and as is  
8 required by HUD through their Multifamily Accelerated  
9 Processing guide, or its MAP guide as we refer to it,  
10 whenever they're coming in on a transaction and there are  
11 subordinate loans such as our direct HOME loans, HUD  
12 requires that any subordinate debt not be structured as  
13 hard pay, as a fully repayable loan. We, of course,  
14 structure our loans that way so that we can refill our  
15 coffers, have that funding available for future affordable  
16 housing that people can apply for.

17 However, when it comes to HUD transactions, HUD  
18 requires, again, that any subordinate debt, including  
19 ours, be structured as a surplus cash flow structure. And  
20 then they further restrict in their MAP guide that any  
21 subordinate debt get repaid not just from surplus cash but  
22 only 75 percent surplus cash, so it places subordinate  
23 lenders like us in a riskier position on transactions  
24 there first lien financing goes up, the amount of first  
25 lien debt goes up on top of our debt, and then asks us to

1 restructure our loans such that we can't get fully repaid  
2 and structured as a fully repayable loan, we go from a  
3 hard debt to a surplus cash flow loan structure.

4 The amendment request, or the request that was  
5 submitted on behalf of the applicant's counsel, suggested  
6 that this requirement from HUD has been in the MAP guide  
7 since August of 2011, and of course, the Department is  
8 fully aware of that requirement, but we have previously  
9 and successfully come to an agreement with HUD to be able  
10 to close on transactions where we're a subordinate lender  
11 and they're the first lien lender and they don't mention  
12 this 75 percent surplus cash restriction, or in other  
13 words, they've waived that particular requirement.

14 We are willing to accommodate and work with HUD  
15 to partner up as a financing partner on these deals and  
16 provide that gap financing, but as a lender, in this case  
17 we're acting as a lender here, we want to be able to have  
18 access to 100 percent of the surplus cash flow to repay  
19 our funds, not just the 75 percent, and in previous  
20 transactions, HUD has been amenable to that request  
21 through a waiver. Now, as I understand it, that waiver  
22 has come primarily through our work with the local HUD  
23 offices in Fort Worth, San Antonio and so forth.

24 We've tried, I've tried to reach out to our HUD  
25 contacts locally at the San Antonio and the Fort Worth

1 offices, as well as the D.C. offices. My understanding  
2 is -- and the attorneys in the room that work with HUD  
3 lenders can correct me if I'm wrong -- something changed  
4 where now the underwriting piece of these transactions  
5 don't go maybe to the local HUD offices, they go directly  
6 to the D.C. offices, and D.C. is just not providing a  
7 waiver for that, or they just changed their position  
8 altogether on that piece, on that waiver with respect to  
9 their relationship with Texas and not providing waivers on  
10 that 75 percent restriction.

11 That being the case, our rules under the direct  
12 loan rules, again, provide us to accommodate an FHA first  
13 line financing structure, provided that we can come in as  
14 a surplus cash, although it's not specific, it doesn't  
15 specifically address 100 percent surplus cash, 75 percent  
16 surplus cash. The applicant's counsel will come up here,  
17 likely, and say: Therefore, your rule gives you the room  
18 to make that interpretation. I would say that while it's  
19 not specifically laid out that staff meant 100 percent,  
20 that is how we have closed on all previous transactions,  
21 that is how we enter these transactions and underwrite  
22 them when we're looking at them is that we're going to  
23 have availability of 100 percent of that surplus cash.

24 And so this is the discussion that I guess is a  
25 long-awaited discussion that we've been meaning to have

1 what you, as our Board, to give us direction and why it's  
2 a neutral recommendation -- or just a neutral at this  
3 point, it's not a recommendation on or the other. Staff  
4 would seek your guidance and how you would like us to  
5 approach these transactions where applicants are wanting  
6 to take advantage of favorable financing, not just through  
7 HUD but with us -- we provide favorable terms on our  
8 direct loans -- but when it comes to subordinating to  
9 HUD's requirement and they're no longer providing a waiver  
10 to say that we'll have access to 100 percent of the  
11 surplus cash, what would this Board like us to do.

12 Now, we will address this during our rulemaking  
13 cycle coming up. I believe the direct loan rules will be  
14 coming up for the Board's approval, a draft version in  
15 October. This will be an issue that we kind of hash out  
16 more fully through that process. In the meantime, and  
17 under the rules that we have in place, staff didn't feel  
18 like it had the authority, that authority goes to the  
19 Board, to approve the change in terms of repayment on our  
20 HOME loan for these two specific deals. And we have been  
21 bringing these deals on a case-by-case basis to you.

22 I will add that as mitigation that the  
23 applicant has offered to the Department for our increased  
24 risk and our concern -- we've had various discussions with  
25 the owner and the owner's counsel on this matter -- they

1 have offered, the owner has offered a guarantee for full  
2 repayment of the direct loan through one of its affiliated  
3 LLC entities. The Board has been presented with and has  
4 previously accepted a personal guarantee on another  
5 request such as this. It was a different scenario, the  
6 owner was asking to refinance his first lien debt with an  
7 FHA product, but they offered, again, a guarantee knowing  
8 that HUD was not providing a waiver on the 75 percent  
9 restriction, and the Board accepted that guarantee as  
10 mitigation for our increased risk.

11 Staff's writeup talks about that mitigation and  
12 appreciate the applicant's intent to help mitigate the  
13 Department's risk that we're incurring with this kind of a  
14 structure. I would just caution that receiving those  
15 guarantees without the Department having any real formal  
16 way of evaluating the guarantees, I'm not sure how useful  
17 that will be as a mitigation on moving forward, we might  
18 want to vet that out a little bit more, but they have  
19 provided that in this case for both Merritt Monument and  
20 Merritt Heritage.

21 And so, unless you guys have any questions for  
22 me.

23 MR. GOODWIN: Raquel, I have a question. Did  
24 this applicant refuse to offer a personal guarantee?

25 MS. MORALES: They just didn't offer. I don't

1 know that he refused to, they just offered up in their  
2 formal request a guarantee from their LLC.

3 MR. GOODWIN: Okay. And did you say we have  
4 information regarding the financial wherewithal of that  
5 LLC?

6 MS. MORALES: No. We have no way of evaluating  
7 those guarantees.

8 MR. GOODWIN: But we have no information from  
9 that LLC either as to whether there's any value to that  
10 guarantee.

11 MS. MORALES: That's correct, we do not have  
12 that information.

13 MR. GOODWIN: Any other questions?

14 MR. IRVINE: Mr. Chairman.

15 MR. GOODWIN: Yes.

16 MR. IRVINE: Just a couple of comments. While  
17 we would love Board guidance and direction, we cannot have  
18 an informal rulemaking, so until and unless the actual  
19 rules are changed, we will continue to bring requests such  
20 as this to the Board for individual consideration.

21 On the subject of the 75 percent cash flow  
22 subordination requirement, I hope HUD is either monitoring  
23 this meeting or reads our transcript. Partners don't  
24 treat each other that way, partners are on a pari passu  
25 basis. We don't try to shift risk from one side to the

1 other.

2 MR. GOODWIN: Any other questions?

3 (No response.)

4 MR. GOODWIN: So since we have a neutral, I  
5 assume we have people that want to speak to this, we need  
6 a motion to hear comments regarding this issue.

7 MR. BRADEN: So moved.

8 MR. GOODWIN: So moved. Second?

9 MS. RESÉNDIZ: Second.

10 MR. GOODWIN: Moved and seconded. All in favor  
11 say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Any opposed?

14 (No response.)

15 MR. GOODWIN: Okay. We'll start to hear  
16 comments.

17 MR. DENISON: Hello, Chairman and Board  
18 members. Thank you.

19 First, I want to apologize because I've been  
20 before you a couple of times on these deals. I closed a  
21 nearly identical transaction in November with HOME and  
22 221(d)(4) FHA for a project in Dripping Springs and HUD  
23 waived this rule, so when we were before you trying to  
24 solve some of the gap problems that the people before me  
25 came and talked to you about solving with the fancy bond

1 thing, we approached the problem of losing funds with  
2 going to FHA financing because it's 40-year amortization  
3 and much lower interest rates which helped us fill the gap  
4 that we lost when we lost the equity.

5 So when we came before you in May, I didn't  
6 know that HUD had changed their tune and didn't do the  
7 waivers, but I'm just here to tell you on Monument,  
8 Monument's credits came to us at the end of 2016 when I  
9 actually had to return the credits on Leisure in Midland  
10 the year before because of the oil price collapse and I  
11 had too many market units and we lost rent and the ability  
12 to source funds and I couldn't make the deal work  
13 feasibly, so the credits came to my next deal for the next  
14 year of 2016 for a much smaller deal, a majority of which  
15 was affordable, and therefore, much more feasible. And so  
16 we're coming back with the FHA financing to make the exact  
17 same deals work as originally contemplated with the same  
18 allocation of tax credits, no change in affordable units,  
19 and we did that really quickly with Monument, it took us a  
20 little bit longer on Heritage in Georgetown, but both  
21 really complicated transactions.

22 And then the last thing I'd like to say is we  
23 are submitting our closing application to HUD today on  
24 Heritage, so we're literally within 15 to 21 days from  
25 closing and breaking ground, so everybody is ready to go.

1 I believe we have all the affordable units spoken for  
2 already and we haven't even broken ground, so there's huge  
3 demand there. And on Monument, we should be getting our  
4 firm commitment next week and we are going to be prepared  
5 to immediately submit our closing package, so I think  
6 we're within 30 to 45 days of closing and getting under  
7 construction. So both deals are completely permitted,  
8 completely designed, so just respectfully ask that you  
9 accept this.

10 Oh, and on the comment on the financials really  
11 quickly, it's a limited partnership that's in every single  
12 one of the deals that TDHCA has done under Merritt  
13 Communities except for two, and so it is the recipient of  
14 all the cash flow on those deals, so you do have the  
15 limited partnership agreements, you have the financials on  
16 those deals. All of our portfolio at Merritt is nearly  
17 100 percent full and very cash flow positive, so I think  
18 it's a very strong financial limited partnership for you  
19 for the guarantee and I was hoping that that would be  
20 something that you could look t.

21 Thank you.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: So I'll be the one to ask the  
25 question. Are you unwilling to do the personal guarantee?

1 MR. DENISON: I'm happy to do the personal  
2 guarantee.

3 MR. GOODWIN: Other comments?

4 MS. BAST: Good morning. Cynthia Bast for the  
5 developer.

6 We really appreciate the opportunity to come  
7 before you again. I feel like I've spoken to you four or  
8 five times on this particular topic now, and I'm sorry  
9 that it has to be rehashed. Again, what we're trying to  
10 do here is solve the loss of credit pricing problem, and  
11 this developer chose to solve it not by reducing the  
12 number of units, not by reducing the quality, keeping all  
13 of those elements, but by finding a way to change the  
14 financing structure to make it work, and therefore,  
15 shifted to this HUD financing in early 2017.

16 Unfortunately, that was right at the time when  
17 HUD central was identifying this issue going on at the  
18 local HUD area offices -- as you'll hear perhaps more  
19 about from Mr. Shackelford, the lender's counsel -- and so  
20 we got caught in that and their position that they wanted  
21 to take that they're not going to waive this surplus cash  
22 75 percent issue anymore.

23 And I've spoken to you before, I've written  
24 multiple letters, I think you all know that I believe that  
25 your rules and your statutes do support approval of this.

1       You have statutory authorization that says that your  
2 application programs and cycles shall be administered in  
3 accordance with federal requirements. You have a rule  
4 that does acknowledge that when there's FHA financing, a  
5 direct loan can be repayable from surplus cash. All of  
6 the elements are there for you to be able to approve this.

7               I do want to emphasize that this is not a last-  
8 minute change by a developer. As I mentioned, the HUD  
9 financing was first proposed in the early part of this  
10 year and we actually came to you with a request in March  
11 that was heard in May that addressed complying with the  
12 MAP guide in certain respects, and looking back, we  
13 probably should have dealt with this issue in full back in  
14 May. We got the 40 years on Heritage but we didn't get  
15 the 40 years on Monument, and we didn't address the 75  
16 percent cash flow back then, and I'm sorry for the cost on  
17 your time on that.

18               While we do appreciate staff's concerns about  
19 repayment of these HOME loans and their obligation to  
20 repay HUD if something goes wrong, I do want to point out  
21 to all of you that when HOME funds are layered with tax  
22 credits, that's probably the most secure HOME loan you can  
23 make. Nationally, the Tax Credit Program has less than a  
24 one percent foreclosure rate, and foreclosure and loss of  
25 those restrictions is what is going to cause that

1 catastrophic event where the Department would have an  
2 obligation to repay HUD. So while I do appreciate the  
3 concern about the risk, I just want to point out that this  
4 layered transaction actually provides you with some  
5 security.

6 So we are ready to close, as Mr. Denison  
7 mentioned, we've offered a guarantee, we could offer  
8 balance sheets to the extent necessary. Our letter did  
9 specifically say, although it suggested a guarantee by  
10 this entity, it did say or such other mitigation as the  
11 Department may determine is appropriate.

12 So we appreciate your consideration, and hope  
13 that you will grant the appeal for both properties. Thank  
14 you.

15 MR. GOODWIN: Thank you.

16 MR. SHACKELFORD: Good morning, Mr. Chairman,  
17 members of the Board, Mr. Irvine, Mr. Eccles. John  
18 Shackelford. In this instance I represent the lender.

19 I've been before you a couple of times on this  
20 issue and I think earlier this year with some other Board  
21 members, but Ms. Bingham, you probably remember we had  
22 another issue like this as well. And I know you're taking  
23 these on a case-by-case basis, but essentially, I'll say  
24 the same thing that I said earlier this year to the other  
25 Board members and yourselves that are still on the Board,

1 and that is I don't have an explanation like Ms. Morales  
2 to get to the bottom of why HUD has made a change and why  
3 they're no longer granting these waivers in Texas.

4 I can tell you, from representing a couple of  
5 lenders, we do deals in other states, the other states  
6 don't ask for waivers, they approve these transactions, so  
7 I don't know if it's just a matter of in D.C. HUD decided  
8 to change their policy and make it's a blanket across the  
9 country no longer giving waivers to the State of Texas.  
10 I've also gotten a little bit of information that they  
11 feel like by having it be 100 percent cash flow, you're  
12 taking away the developer from having any kind of  
13 incentive because they're not pulling any cash out to put  
14 in their pocket, all their money that they're making is  
15 going to serve as debt and operating expenses.

16 So whether it's a matter of they feel like they  
17 just want to have a blanket rule that covers all states  
18 and no longer give Texas a waiver, or what exactly it is,  
19 it's just gotten to be where, unfortunately, developers  
20 find themselves caught between a rock and a hard place  
21 between TDHCA's goals of trying to have it be where  
22 they're not taking a subordinate position with HUD on  
23 their financing by having only 75 percent financing, but  
24 HUD's rule and the MAP guide being a max of 75 percent  
25 cash flow for the payment of that subordinate debt.

1           So that's really all I can tell you. Sometimes  
2 I represent developers and we have the same issue and it  
3 is a difficult position for the developer to be in because  
4 what's hard is -- and I agree with Ms. Bast on this -- I  
5 think the Board could make a determination that they could  
6 instruct staff to interpret the language a little  
7 differently than what they do, I think you've got the  
8 ability to do that, but it makes it very difficult for the  
9 developer at this late point in the game to be coming  
10 seeking approval from the Board because if the Board says  
11 no, they're out of a lot of money, I mean, we're way down  
12 the path. As Mr. Denison said, we're submitting the  
13 package to HUD and we're requesting a closing date of  
14 September 26, so the deal is teed up, it's ready to go,  
15 and the one for Monument is coming right in behind.

16           So if you have any questions, I'll be glad to  
17 answer any questions.

18           MR. GOODWIN: Any questions?

19           (No response.)

20           MR. GOODWIN: Anybody else that was going to  
21 comment?

22           MS. McDONALD: Good morning, Chairman Goodwin  
23 and Board members. My name is Joyce McDonald, and I am  
24 the executive director and founder of Frameworks Community  
25 Development Corporation, so thank you for allowing me to

1 stand before you today.

2 I will say that this deal is at the core of  
3 Frameworks' mission. Affordable housing, especially for  
4 senior housing, is a need and the deficit is growing.

5 We are a nonprofit organization dedicated to  
6 serving the low income housing community in Austin and the  
7 surrounding areas, so we are thrilled to partner with  
8 Merritt Communities on Merritt Heritage in Georgetown  
9 because the exemplary reputation of the Merritt team is  
10 evidenced by their consistent high compliance scores and  
11 beautiful product.

12 This is our first tax credit funded affordable  
13 housing community, and as luck would have it, it seems to  
14 be immensely challenging. After the election and the  
15 subsequent of tax credit syndication market resulting in  
16 the loss of 15 percent of the value of the tax credits,  
17 the Merritt team immediately pursued the 221(d)(4) FHA  
18 financing to source additional funding to fill the gap.  
19 As you know, the Austin market is booming and the  
20 construction activity is at an all-time high which has  
21 caused labor and material costs to skyrocket. As a  
22 result, Heritage was impacted by both cost increases and  
23 loss of funding sources.

24 A few months back we brought a request for an  
25 additional million dollars in HOME funds, and TDHCA staff

1       underwrote the new FHA financing and approved the 40-year  
2       term required of the HOME funds by HUD. Somehow the  
3       request for HUD mandate at 75 percent cash flow provisions  
4       wasn't addressed at that time. We sincerely apologize  
5       that we're back seeking this approval now before you.

6               Merritt Heritage is a remarkable project in  
7       that it is one of the few projects funded by tax credits  
8       where half of its units are not rent-restricted. We  
9       believe mixing incomes is so positive on those involved.  
10       Heritage is located in Williams Drive in Georgetown, the  
11       entrance of the thriving senior community of Sun City and  
12       of the major east-west arterial for one of the fastest  
13       growing communities in America. There is significant  
14       retail and services surrounding this location and much is  
15       within walking distance.

16               Heritage is heavily supported by the community,  
17       receiving the only support letter from the State  
18       Representative Marsha Farney. City council and the  
19       Georgetown Affordable Housing Task Force joined the  
20       support of multiple local community groups to support our  
21       project. We are within 30 days, as they've said, of  
22       breaking ground as we are submitting our closing package  
23       to HUD today and our interest list is already full for all  
24       the affordable units, which we're thrilled about. We hope  
25       you will see this tremendous support as significant

1 security for your loan.

2 The Merritt team has additionally agreed to  
3 guarantee your loan to mitigate any concerns that you may  
4 have, which was mentioned by Mr. Denison.

5 We thank you for your time and devotion to  
6 affordable housing and request that you approve our  
7 request for the approval of the HUD required cash flow  
8 provision for the HOME funds for Merritt Heritage.

9 Thank you for allowing me to speak before you  
10 today. If you have any questions, I'd be more than happy  
11 to address them.

12 MR. GOODWIN: Thank you.

13 Any questions?

14 (No response.)

15 MR. GOODWIN: I will entertain a motion. I  
16 would love for it to include a guarantee from Mr. Denison,  
17 as well as the LLC. I'll entertain any motion that anyone  
18 would like to make.

19 MS. BINGHAM ESCAREÑO: Raquel, would the motion  
20 be relative to the change in the direct loan terms? Is  
21 that what we're either approving or not approving?

22 MS. MORALES: A change in the direct loan terms  
23 for Monument because that never got dealt with at the May  
24 Board meeting, so they're asking to extend their term to  
25 40 years and then asking to change the repayment terms.

1 I do want to just clarify for the Board's  
2 consideration, in the board action writeup we did include  
3 that in the case that the Board decided to go ahead and  
4 approve the request, staff recommended approving that  
5 request subject to some conditions that we set out in  
6 addition to any other conditions that the Board would like  
7 to impose. I'm just going to read through those because I  
8 believe it's the same in both cases.

9 MS. BINGHAM ESCAREÑO: Are they in our board  
10 book, Raquel?

11 MS. MORALES: Yes, they're in the board action  
12 request for both Merritt Heritage and Merritt Monument.

13 But what staff laid out was that should the  
14 Board approve the request, staff recommends making the  
15 approval subject to: one, the owner's ability to meet any  
16 additional conditions imposed on the 2016 loan commitment  
17 as stated in the latest underwriting report performed by  
18 our REA Division; and two, that the owner's agreement  
19 based on general staff concerns regarding timing for  
20 placement in service, that neither force majeure or an  
21 extension to the placed in service deadline, or waiver of  
22 the carryover agreement provisions, that all units be  
23 placed in service by the placed in service deadline.

24 When we've had meetings with the applicant,  
25 they've assured us that there would be no problem placing

1 these units in service on time, so we just kind of want to  
2 put that out there that if the Board chooses to approve  
3 this request that we hope that they can deliver those  
4 units timely without a request for an extension.

5 MR. GOODWIN: Do I hear a motion?

6 MS. BINGHAM ESCAREÑO: I have a question. So  
7 do those conditions sound good to Colby, those two  
8 conditions are acceptable? That would be to meet any  
9 other conditions as identified by REA in the underwriting  
10 and then to meet the placed in service deadline.

11 MR. DENISON: I don't have any issues with that  
12 other than being a little bit scared about what's going to  
13 happen to all of us in Texas after this hurricane in  
14 materials and labor, and so I'm a little bit nervous about  
15 force majeure.

16 MS. BINGHAM ESCAREÑO: Did you just except  
17 force majeure? Included force majeure?

18 MS. MORALES: You mean in our recommendation?  
19 We just said that they wouldn't come back and ask for an  
20 extension either under force majeure or an extension to  
21 placement in service, again, based on our concerns on the  
22 timing and their indication that they didn't believe they  
23 would have any issues.

24 MS. BINGHAM ESCAREÑO: I'll move to approve the  
25 requested change, the terms for -- should we do Merritt

1 Monument, can we do them together?

2 MR. GOODWIN: We can do them both together, or  
3 should we do them separate, Beau?

4 MR. ECCLES: Hang on for a second. Just on the  
5 issue of foreclosing the ability for an applicant to claim  
6 force majeure, are we talking about for events that have  
7 occurred to date or are we talking prospectively?

8 MR. IRVINE: I'm not comfortable foreclosing  
9 the possibility of raising a force majeure claim in the  
10 future should unanticipated things arise.

11 MS. THOMASON: Me neither.

12 MS. MORALES: That's fine. Whatever you want  
13 to do.

14 MS. BAST: If a building burns down, that's  
15 what force majeure is supposed to be there for.

16 MR. GOODWIN: We're going to exclude force  
17 majeure from this.

18 MS. BAST: Thank you.

19 MS. BINGHAM ESCAREÑO: So my other question was  
20 do we take Heritage and Monument separately, or does the  
21 motion can be for both?

22 MS. MORALES: Let me just clarify on that. So  
23 for Merritt Heritage, you already extended the term to 40  
24 years, this is just the payment structure modification.  
25 If you want to take that first separately, you can do

1 that.

2 MS. BINGHAM ESCAREÑO: So move to approve the  
3 applicant's request to change the direct loan terms for  
4 Merritt Heritage, to include personal guarantee from  
5 applicant for the other 25 percent repayment.

6 MR. GOODWIN: Motion. Second?

7 MR. BRADEN: Second.

8 MR. GOODWIN: Moved and seconded. Any  
9 questions? We have a comment?

10 MS. SYLVESTER: Megan Sylvester, Legal.

11 I just wanted to clarify, did your motion mean  
12 in addition to the guarantee from the LLP

13 MS. BINGHAM ESCAREÑO: Yes.

14 MR. GOODWIN: Any other questions?

15 MS. BINGHAM ESCAREÑO: The LLP guarantee was in  
16 the writeup and then the chair asked for the personal  
17 guarantee on top of.

18 MR. GOODWIN: And you're comfortable with that,  
19 Colby?

20 MS. BINGHAM ESCAREÑO: So amended.

21 MR. IRVINE: Could I just offer a clarification  
22 of what I would contemplate to be the scope of guarantees.

23 If, for reasons we hope never come to pass, the deal is  
24 unable to perform in accordance with applicable  
25 requirements and that triggers a federal repayment

1 liability, we want the guarantee of that repayment  
2 liability. That's the real issue.

3 MR. GOODWIN: You understand that, Colby, and  
4 you're comfortable with that?

5 MR. DENISON: (Speaking from audience.) Yes.  
6 I don't have a choice.

7 (General laughter.)

8 MR. GOODWIN: I didn't ask that question.

9 MR. DENISON: Yes, sir.

10 MR. GOODWIN: You're comfortable with that.

11 So we'll take that motion and we have a second.  
12 Any other discussion?

13 MR. VASQUEZ: Can we add guarantees from the  
14 lawyers?

15 (General talking and laughter.)

16 MR. GOODWIN: All those in favor say aye.

17 (A chorus of ayes.)

18 MR. GOODWIN: Opposed?

19 (No response.)

20 MR. GOODWIN: Okay. Now we'll take Monument.

21 MS. MORALES: And Monument is requesting both  
22 to extend the term to 40 years to match the first lien FHA  
23 term, and the repayment structure of our direct loan.

24 MR. GOODWIN: And again, excluding force  
25 majeure from the provision.

1 MS. BINGHAM ESCAREÑO: Mr. Chair, I would move  
2 to accept applicant's request to change the repayment  
3 terms for the direct loan from 18 to 40 years on Merritt  
4 Monument, and to allow the repayment terms as requested in  
5 the prior application, to include meeting the conditions  
6 as requested by the Department and a guarantee by the LLC  
7 and a personal guarantee by the applicant.

8 MR. GOODWIN: Do I hear a second?

9 MS. RESÉNDIZ: Second.

10 MR. GOODWIN: So it's been moved and seconded.

11 Any discussion?

12 (No response.)

13 MR. GOODWIN: All in favor say aye.

14 (A chorus of ayes.)

15 MR. GOODWIN: Opposed?

16 (No response.)

17 MR. GOODWIN: That motion passes as well.

18 Thank you.

19 So I think we had pulled from the agenda 1(p)  
20 which we're not going to take up at this time, but also  
21 1(q) Palladium Glenn Heights.

22 Andrew, you're going to present?

23 MR. SINNOTT: That's correct.

24 MR. GOODWIN: Okay. So this is item 1(q).

25 MR. SINNOTT: Good morning. Andrew Sinnott,

1 Multifamily Direct Loan Program administrator.

2           So item 1(q) is presentation, discussion and  
3 possible action on a determination notice for 4 percent  
4 credits with another issuer and an award of direct loan  
5 funds.

6           So the reason that this was pulled from the  
7 consent agenda was so that we could discuss some unique  
8 aspects of the direct loan request for this transaction  
9 that we were hoping to get into the BAR but were  
10 ultimately unable to due to the continuing conversation we  
11 had with the applicant after the BAR was posted.

12           Specifically, there are two adjustments that  
13 need to be made to the terms of the direct loan award.  
14 First, regarding the terms of the TCAP repayment fund loan  
15 that is recommended to be awarded to Palladium Glenn  
16 Heights out of the soft repayment set-aside, the applicant  
17 was unaware of the ramifications of receiving the award as  
18 a deferred forgivable loan prior to conversations that  
19 staff had with the applicant as the underwriting was being  
20 finalized this week. So it's an \$800,000 TCAP repayment  
21 funds loan, and the applicant was unaware that if it's  
22 structured as a deferred forgivable loan, it could  
23 potentially be deducted from basis at the time of cost  
24 certification and could result in a loss of credits, and  
25 therefore, a loss of equity.

1           Having recently discussed this prospect with  
2 the applicant, the applicant has requested, and staff is  
3 amenable to restructuring the \$800,000 TCAP repayment  
4 funds loan to be a deferred payable loan in accordance  
5 with 10 TAC 13.4(a)(1)(A). So this is just an allowable  
6 structure under the direct loan program. We have deferred  
7 forgivable, deferred payable, or surplus cash flow as the  
8 available options under this supportive housing soft  
9 repayment set-aside.

10           Second, there are two sub issues regarding the  
11 FHA insured debt in front of TDHCA's loan, one for staff  
12 to resolve with HUD and one for the Board to resolve.  
13 Regarding the issue for staff and HUD to resolve, this  
14 direct loan award for Palladium Glenn Heights, like the  
15 direct loans for the two Merritt transactions that you  
16 just heard about, will be subordinate to an FHA insured  
17 first lien loan under the 221(d)(4) program, however, the  
18 direct loan for Glenn Heights is being made with TCAP  
19 repayment funds, whereas the direct loans for the two  
20 Merritt transactions were composed of HOME funds.

21           So this will be the first time that a TCAP  
22 repayment funds loan, which we're using as HOME match,  
23 will be subordinate to an FHA insured loan, so there will  
24 have to be conversation with HUD and/or the FHA lender  
25 regarding this specific fund source being subordinate to

1     FHA insured debt and an allowance of the HUD rider  
2     restrictive covenant agreement to be modified so that  
3     TDHCA's TCAP RF LURA is not subordinate to the FHA insured  
4     security instrument. Despite having to have this  
5     conversation with HUD and/or the FHA lender, staff expects  
6     approval of this fund source as subordinate debt and  
7     approval of the HUD rider restrictive covenant agreement  
8     to be modified within the next few weeks. So we just want  
9     to make sure that our LURA cannot be extinguished by  
10    foreclosure, the TCAP LURA.

11             Regarding the issue requiring Board approval,  
12    as you just heard with the two Merritt transactions, HUD  
13    recently began requiring the 75 percent surplus cash flow  
14    language to be included in TDHCA's subordinate promissory  
15    notes, whereas, in the past TDHCA was able to not specify  
16    a percentage of surplus cash flow from which TDHCA's loan  
17    would be repaid, resulting in all of surplus cash flow  
18    being available to repay TDHCA's loan.

19             Unlike the Merritt transactions, the loan for  
20    Palladium Glenn Heights is being made out of the  
21    supportive housing soft repayment set-aside, meaning that  
22    if there is an annual payment to the loan, the annual  
23    payment will not be subject to default. Additionally,  
24    unlike the Merritt transactions, the 2017 NOFA that this  
25    application was submitted under is still open so these

1 modifications are available to applicants under this 2017  
2 NOFA as long as that NOFA is still open.

3 Staff requests explicit authority from the  
4 Board to have the 75 percent surplus cash flow language in  
5 the note should HUD require that language. Also, staff  
6 notes that this decision does not serve as a precedent for  
7 future transactions. As Raquel said, we're going to try  
8 and get this taken care of in the rewrite of the rule, the  
9 Multifamily Direct Loan rule for 2018 so that we don't  
10 have to come back here on a case-by-case basis.

11 EARAC met yesterday and recommended approval of  
12 this transaction subject to staff working out with HUD the  
13 matter discussed within this action item, and subject to  
14 an updated underwriting report reflecting the terms of the  
15 loan before closing, which potentially will be next month.

16 Staff recommends approval of the \$800,000  
17 direct loan funds and issuance of a determination notice  
18 for 4 percent credits in the amount of \$1,104,990, with  
19 the condition noted herein, as well as any conditions  
20 included in the underwriting report. If you have any  
21 questions, I'll be happy to answer them.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: Do I hear a motion to hear  
25 comments? I see a couple of people want to talk.

1 MS. RESÉNDIZ: So moved.

2 MR. GOODWIN: So moved. Second?

3 MR. VASQUEZ: Second.

4 MR. GOODWIN: Moved and seconded. All in favor  
5 say aye.

6 (A chorus of ayes.)

7 MR. GOODWIN: We'll entertain comments.

8 MR. SHACKELFORD: John Shackelford on behalf of  
9 the developer.

10 We don't really have any comments, just  
11 available for questions, really, because you're  
12 recommending approval and we're good with that. Thank  
13 you.

14 MR. GOODWIN: Any questions for the developer,  
15 for John?

16 (No response.)

17 MR. GOODWIN: Okay. I'll take a motion to  
18 approve staff's recommendation.

19 MS. BINGHAM ESCAREÑO: I'll so move.

20 MR. GOODWIN: Second?

21 MS. RESÉNDIZ: Second.

22 MR. GOODWIN: Any comments or questions?

23 (No response.)

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

1 (A chorus of ayes.)

2 MR. GOODWIN: Opposed?

3 (No response.)

4 MR. GOODWIN: It is granted.

5 Let's move into Multifamily Finance. Item  
6 7(b).

7 MS. HOLLOWAY: Good morning.

8 Item 7(b) is presentation, discussion and  
9 possible action regarding the issuance of multifamily  
10 housing revenue bonds for the Casa Brendan development and  
11 a determination notice of housing tax credits.

12 The Board adopted the inducement resolution on  
13 June 28 for this project and a certificate of reservation  
14 was issued in August 18 with a bond delivery deadline of  
15 January 15, 2018. The applicant has disclosed the  
16 presence of undesirable neighborhood characteristics,  
17 specifically relating to the poverty rate that exceeds 40  
18 percent according to Neighborhood Scout. Staff has  
19 visited the site on August 30 and found the neighborhood  
20 to be older and established with several small businesses,  
21 values in the neighborhood have appreciated in the last  
22 year, and in addition, the percentage of households in the  
23 census tract with incomes at roughly the county median  
24 increased from 32 percent in 2011 to 43 percent in 2015,  
25 indicating an upward trend in incomes. Based on this

1 information, staff believes the undesirable neighborhood  
2 characteristic related to the poverty rate is not of a  
3 nature and severity that should render the site  
4 ineligible.

5 Casa Brendan Apartments is located in  
6 Stephenville and it proposes the acquisition and  
7 rehabilitation of 86 units originally constructed in 1985.

8 The development will serve an elderly population. All of  
9 the units will be rent and income restricted at 60 percent  
10 of AMI, and the development is covered by a project based  
11 Section 8 HAP contract.

12 A public hearing for the proposed development  
13 was conducted by staff on August 30 of 2017, and there was  
14 no one in attendance. The Department has not received any  
15 letters of support or opposition for this development.

16 This transaction involves a Fannie Mae  
17 multifamily pass-through mortgage-backed security. The  
18 mortgage loan will be originated by the Department to the  
19 borrower on the closing date and funded with the bond  
20 proceeds. Simultaneously with the closing, the loan will  
21 be assigned to the Fannie Mae lender, which is Wells  
22 Fargo, and the funds used by the lender by which to  
23 acquire the loan will be deposited into a collateral  
24 account to secure the bonds. With this structure, the  
25 project will be 100 percent cash collateralized at all

1 times, thus offering protection for the bondholders.

2 Payments on the bonds will be guaranteed by Fannie Mae.

3 Staff recommends that the site for Casa Brendan  
4 be found eligible under the undesirable neighborhood  
5 characteristics rule. Staff further recommends approval  
6 of the issuance of up to \$6 million in tax-exempt  
7 multifamily housing revenue bonds, and the issuance of a  
8 determination notice of \$305,948 in 4 percent housing tax  
9 credits for Casa Brendan, of course, subject to any  
10 previous participation and underwriting concerns.

11 MR. GOODWIN: Questions?

12 (No response.)

13 MR. GOODWIN: Seeing that nobody wants to  
14 comment, I'll entertain a motion to approve staff's  
15 recommendation.

16 MS. BINGHAM ESCAREÑO: Move staff's  
17 recommendation.

18 MR. GOODWIN: Moved staff's recommendation.  
19 Second?

20 MR. BRADEN: Second.

21 MR. GOODWIN: Moved and seconded. Any  
22 discussion?

23 (No response.)

24 MR. GOODWIN: All in favor say aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay. 7(c).

4 MS. HOLLOWAY: Item 7(c) is presentation,  
5 discussion and possible action regarding the issuance of  
6 multifamily housing revenue bonds for the Nuestro Hogar  
7 development and a determination notice of housing tax  
8 credits. This is the same applicant and moves in the same  
9 timeline and has the same structure as the Casa Brendan  
10 item that we just approved.

11 The applicant has requested a waiver of one of  
12 the mandatory development amenities under the Uniform  
13 Multifamily Rules, specifically the requirement that all  
14 units must have central heating and air conditioning. The  
15 development is three stories tall, includes efficiency  
16 units sized at 415 square feet and one-bedroom units sized  
17 at 540 square feet. Both unit types currently have  
18 packaged terminal air conditioners. PTAC units meet the  
19 requirement for central heating and air conditioning for  
20 single room occupancy or efficiency units only, so under  
21 the rule, the waiver request is really about the one-  
22 bedroom units.

23 Given that both rooms are heated and cooled  
24 with the PTAC units and the relatively small size of the  
25 units, staff believe that the PTAC system would be

1 effective in cooling and heating. Moreover, the scope of  
2 the work for the rehabilitation includes replacing the  
3 current PTAC units with newer more efficient ones. It has  
4 been estimated that the cost to add central HVAC could add  
5 as much as \$5,700 per unit, or an increase of  
6 approximately \$372,000 to the project cost, with  
7 ultimately no positive net effect.

8           Regarding the waiver, in accordance with rule  
9 and statute, the Department is to provide for the housing  
10 needs of individuals and families of low, very low and  
11 extremely low income and families of moderate income, as  
12 well as the preservation of government assisted housing.  
13 Staff believes the proposed development meets the stated  
14 purpose. Additionally, considering the structural  
15 challenges and estimates cost associated with installing a  
16 central HVAC system, staff believes an economic and  
17 practical approach would be to upgrade the current  
18 systems, and therefore, recommends that the waiver be  
19 granted.

20           Nuestro Hogar is an existing development  
21 located in Arlington. The project will acquire and  
22 rehabilitate 65 units originally constructed in 1986. It  
23 is serving an elderly population. All of the units will  
24 be rent and income restricted to 60 percent of AMI, and  
25 they are covered by a project based Section 8 HAP

1 contract.

2 A public hearing for the proposed development  
3 was conducted by staff on August 30 of 2017, and there was  
4 no one in attendance. The Department has not received  
5 any letters of support or opposition for this development.

6 Staff recommends waiver of the mandatory  
7 community amenities rule as described be granted and that  
8 the issuance of up to \$6 million in tax-exempt multifamily  
9 housing revenue bonds be approved, along with a  
10 determination notice of \$194,510 in 4 percent housing tax  
11 credits, subject to previous participation conditions and  
12 underwriting conditions.

13 MR. GOODWIN: Any questions?

14 (No response.)

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

17 MR. VASQUEZ: Move to approve staff's  
18 recommendation.

19 MR. GOODWIN: Second?

20 MS. THOMASON: Second.

21 MR. GOODWIN: Moved and seconded. All those in  
22 favor say aye.

23 (A chorus of ayes.)

24 MR. GOODWIN: Opposed?

25 (No response.)

1 MR. GOODWIN: Okay. 7(c) passes. Now we can  
2 go to 7(d).

3 MS. HOLLOWAY: This is the third of the  
4 applications that we're taking up today from the same  
5 applicant, so this will have the same timeline and  
6 financial structure as Casa Brendan and Nuestro Hogar that  
7 we just discussed. This is presentation, discussion and  
8 possible action regarding the issuance of multifamily  
9 housing revenue bonds and a determination notice of  
10 housing tax credits for Casa, Inc.

11 Casa, Inc. Apartments is located in Fort Worth  
12 and proposes the acquisition and rehabilitation of 200  
13 units serving an elderly population. All of the units  
14 will be rent and income restricted at 60 percent of AMI,  
15 with one employee occupied unit. Currently all of the  
16 units are covered by a project based Section 8 contract.

17 This application also requests a waiver  
18 regarding the PTAC units, and similarly, they are  
19 replacing current existing PTAC units with newer more  
20 energy efficient PTACs. The architect and engineer on  
21 this project have estimated the cost to install central  
22 heat and air conditioning into these units could be as  
23 much as \$5,100 a unit, or an increase of approximately a  
24 million dollars on the project cost. Staff believes the  
25 waiver is warranted under the same rule and statute as the

1 Nuestro Hogar project which was our previous agenda item.

2 A public hearing for the proposed development  
3 was conducted by staff on August 30 of 2017, and there was  
4 no one in attendance. The Department has not received any  
5 letters of support or opposition for this development.

6 Staff recommends that the waiver of the  
7 mandatory community amenities rule be granted and that the  
8 issuance of up to \$25 million in tax exempt multifamily  
9 housing revenue bonds be approved, along with the issuance  
10 of a determination notice of \$993,773 in 4 percent housing  
11 tax credits, subject to any previous participation  
12 conditions or underwriting conditions.

13 MR. GOODWIN: Any questions?

14 (No response.)

15 MR. GOODWIN: Do I hear a motion for staff's  
16 approval?

17 MR. BRADEN: I'll make a motion to approve.

18 MR. GOODWIN: Second?

19 MR. VASQUEZ: Second.

20 MR. GOODWIN: Moved and seconded. Any  
21 discussion?

22 (No response.)

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

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: 7(e).

4 MS. HOLLOWAY: 7(e) follows on the  
5 Commissioners' Corner item that we discussed earlier on  
6 the 9 percent amendment. This is presentation, discussion  
7 and possible action on a determination notice for housing  
8 tax credits with another issuer. The proposed issuer for  
9 the bonds in this transaction is Alameda Public Facilities  
10 Corporation which has partnered with HACEP on a number of  
11 transactions.

12 As I mentioned, this application is part of the  
13 reconfiguration of an application that received 2016  
14 competitive allocation into two developments, one with the  
15 9 percent, the other with the 4 percent. Commissioners'  
16 Corner Phase II involves the new construction of 92 units,  
17 of which 62 will be rent and income restricted at 60  
18 percent of AMI, 20 will be restricted at 50 percent, and  
19 the remaining ten units will be restricted at 30 percent.

20 Based on various deadlines, staff has  
21 identified the need for a waiver of application  
22 requirements. The application was submitted in a time  
23 frame that adhered to our 75-day deadline which allowed  
24 staff the time it needed for evaluation, however, it was  
25 submitted without evidence that the request for bond

1 volume cap had been approved by the issuer. Staff was  
2 aware of the intent to submit the application and was  
3 aware that the request had been placed on the issuer's  
4 board agenda for consideration shortly after the  
5 application was submitted. Considering the continuing  
6 partnership of the applicant and the issuer, staff  
7 believes the constraints in obtaining the inducement  
8 resolution were primarily related to posting requirements  
9 and the Board's meeting schedule, and that waiver of that  
10 application requirement is appropriate.

11 We earlier discussed Board action in March of  
12 2017 regarding the 2016 applications. This particular  
13 transaction seems to step outside of that sort of broad  
14 approval that was granted to us at that time, so of  
15 course, staff has had some concerns with it. EARAC  
16 considered the proposed application and concluded that  
17 they could neither recommend approval nor denial of the  
18 proposed development without prior Board action on the  
19 related amendment request on this agenda as 6(a) which  
20 directly impacts the feasibility of this development.

21 Based on the earlier action regarding the 9  
22 percent application, staff recommends that the issuance of  
23 a determination notice of \$538,417 in 4 percent housing  
24 tax credits, including necessary waivers of existing rules  
25 pursuant to the Board's prior action at the March 2017

1 meeting, be approved, subject to the previous  
2 participation and underwriting conditions.

3 MR. GOODWIN: Any questions?

4 (No response.)

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

7 MR. BRADEN: I'll make that motion.

8 MR. GOODWIN: Second?

9 MS. RESÉNDIZ: Second.

10 MR. GOODWIN: It's been moved and seconded.

11 Any discussion?

12 (No response.)

13 MR. GOODWIN: Anybody want to speak? No?

14 Thought you might feel that way?

15 All those in favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Okay. That's passed.

20 MS. HOLLOWAY: 7(f) is presentation, discussion  
21 and possible action regarding alternative financing  
22 structures under the 2017-1 Multifamily Direct Loan Notice  
23 of Funding Availability. We're not asking you to take  
24 action on a particular application, we are presenting an  
25 idea and saying is this something that you as the Board

1 believe we should pursue.

2           So the 2017-1 NOFA was approved on December 15  
3 and has been amended several times to add funds, adjust  
4 set-asides or timelines. The Department has typically  
5 awarded direct loan funds as construction to perm through  
6 which a borrower closes on the loan, draws on funds over  
7 the course of construction, and then the entirety of the  
8 loan converts to a permanent loan, generally amortizing or  
9 it may be a deferred forgivable loan.

10           A current applicant has requested that the  
11 Department consider the use of direct loan funds as a  
12 construction loan only. The applicant has proposed  
13 drawing down the entirety of the direct loan funds at  
14 closing and paying a nominal interest rate over a 24 to 36  
15 month course of construction. The loan would be paid off  
16 in full upon rent stabilization or closing of the  
17 permanent financing. Using the direct loan funds as a  
18 bridge or construction loan would allow some of the equity  
19 contributions to be deferred until later in construction,  
20 thereby increasing the equity price.

21           In order to achieve the applicant's request,  
22 the Board would have to waive requirements in the direct  
23 loan rule which require no more than 50 percent of the  
24 direct loan award be drawn in the first draw and that the  
25 remaining 50 percent be drawn at an even level with

1 construction completion. We are not asking you to waive  
2 that today, we're just saying that's part of what would be  
3 included as we move forward if we take this path.

4 While not explicitly prohibited by the NOFA or  
5 rule, this type of loan structure is different enough from  
6 previous direct loan structures that staff believes its  
7 departure from the normal course of business deserves  
8 Board consideration. Staff recommends approval of a plan  
9 to continue to explore this loan structure, including  
10 evaluation and underwriting of applications so long as the  
11 construction loan structure does not expose the Department  
12 to undue risk and in such a way that all necessary federal  
13 and state requirements continue to be met. Of course, any  
14 applications would come back to you for approval and with  
15 that request for waiver of those requirements in rule.

16 MR. GOODWIN: Questions?

17 MR. VASQUEZ: Question. Marni, so you say  
18 we're trying to structure it where we loan them all the  
19 construction costs?

20 MS. HOLLOWAY: A portion. I don't know for  
21 sure what the numbers are. At this point what we're  
22 looking for is is this okay with the Board for us to  
23 continue to look at, and if we spend some time on this  
24 application and in this underwriting and bring it back to  
25 you, is that okay. I have no specifics about the

1 applicant at this time.

2 MR. VASQUEZ: I would just want the Department  
3 staff to just ensure if you continue down this path, we  
4 have to ensure that the equity is in the deal up front to  
5 match the loan amount. I just don't know how they're  
6 going to put together -- it sounds like they're just  
7 trying to say, well, if we get it almost done, it will be  
8 easier to get the equity, which is on any deal.

9 MS. HOLLOWAY: So just a question for clarity  
10 so we know moving forward, are you looking for equity  
11 contribution to match ours, or are you looking for equity  
12 commitment?

13 MR. VASQUEZ: As close to contribution as  
14 possible.

15 MS. HOLLOWAY: Okay.

16 MR. GOODWIN: My question when you brought this  
17 up is why are we getting in the interim construction  
18 business. Are these deals having trouble getting interim  
19 construction lending?

20 MS. HOLLOWAY: Potentially. Part of the  
21 attraction for us is it turns those funds over for us that  
22 much more quickly, so we're receiving that program income  
23 back in and we can put it back out into another project,  
24 whether it's a construction loan or a longer term loan, it  
25 kind of turns the dollars over more.

1           Part of it, if the applicant is able to achieve  
2 a better equity price through this structure, one would  
3 hope that we would be able to prove through the  
4 underwriting process that this creates a healthier  
5 development in the long run, which can only serve to  
6 benefit everyone involved.

7           The other important piece to keep in mind is  
8 that our affordability period, our LURA would be  
9 continuing on beyond that loan repayment.

10           MR. VASQUEZ: And so on each of these then  
11 would we be expected to then be putting in the permanent  
12 finance and take out the construction loan?

13           MS. HOLLOWAY: So the current structure for  
14 most of our direct loan transactions is construction to  
15 permanent. So we're coming in at construction with a  
16 portion of the financing that's limited by the direct loan  
17 rule, and then we roll over to permanent financing. In  
18 this instance, they're staying we just need you at the  
19 front-end and then we'll pay you off.

20           MR. VASQUEZ: So under this scenario, we would  
21 not be doing the permanent lending.

22           MS. HOLLOWAY: A permanent lender. No.

23           MR. VASQUEZ: Just to add on to my parameters  
24 that I think we should examine, if we have a commitment  
25 from one of Citibank or whatever as a permanent lender, if

1 they have that in place up front, that commitment, I'd be  
2 more open to exploring providing the construction finance.

3 If we're providing all the construction finance and the  
4 permanent finance and then we hope they get their equity,  
5 I mean, we're being the developer at that point.

6 MS. HOLLOWAY: So you're looking for more  
7 solidity at the front-end before we commit to the  
8 transaction.

9 MR. VASQUEZ: Ideally, yes.

10 MR. GOODWIN: Other questions? I've got a  
11 couple more questions. Do we have a department that does  
12 interim construction lending now?

13 MS. HOLLOWAY: We have done construction, like  
14 draws, five draws on single family, that kind of thing.  
15 We have done that kind of financing in the past, and  
16 again, currently we're set up for construction to perm, so  
17 we are, in fact, receiving those interim draws through the  
18 construction process. In this instance we're just not  
19 rolling over to the permanent financing when the  
20 construction is completed. So we absolutely are set up  
21 for receiving, evaluating, inspections, going through that  
22 whole process of drawing construction funds.

23 MR. GOODWIN: If as a Board we gave you  
24 guidance and said go forward, would you be developing  
25 interim construction rules for these types of loans and

1 how they may be granted?

2 MS. HOLLOWAY: It's something we would be  
3 rolling into the updated Chapter 13 rules that we're going  
4 to bring back to you in draft next month.

5 MR. GOODWIN: Okay. Brent, any comments you  
6 want to make, being a former multifamily developer, on how  
7 you see this?

8 MR. STEWART: Sure. Brent Stewart, Real  
9 Estate Analysis.

10 I think what happens here is we're bridging the  
11 equity. The repayment for our loan comes from an equity  
12 payment once the project is completed, not so much the  
13 permanent lender, which is a way better place to be. By  
14 bridging that equity, the equity comes in later, the pay-  
15 in schedule gets protracted you over the construction  
16 period. That creates a higher yield for the equity which  
17 then allows that to translate into a higher credit price  
18 going up front. Some of the repayment would potentially  
19 come from perm debt. My bet is most of it would come from  
20 kind of that last capital contribution that comes into the  
21 partnership.

22 And then on the other piece, we effectively do  
23 this now. Actually, this can be done now because there's  
24 nothing that says that somebody can't pay us off at the  
25 end of 24 months now. I think this is just a program that

1 helps the equity guys understand that it's a true program,  
2 it's something that we're looking to do and they can bank  
3 on that in terms of committing to those equity prices.

4 MR. IRVINE: The way I look at it is by  
5 bridging the equity, you provide a more stable,  
6 predictable, long-term equity structure, therefore, your  
7 HOME repayment risk that you created on the front-end is  
8 operating in a more stable environment.

9 MR. GOODWIN: What are you looking for from us?

10 MS. HOLLOWAY: We are looking for Board  
11 approval of our plan to continue to explore this loan  
12 structure, of course, with an understanding that any of  
13 these awards we would be bringing back to you for approval  
14 individually.

15 MR. GOODWIN: Do I hear a motion?

16 MR. BRADEN: Move to approve.

17 MR. GOODWIN: Move to approve. Second?

18 MS. RESÉNDIZ: Second.

19 MR. GOODWIN: It's been moved and seconded.

20 Any discussion?

21 MR. PALMER: Brent covered most of the points I  
22 was going to make. One of my clients is the one who  
23 proposed this. It would result in a number of positive  
24 things for the Department, including being able to touch a  
25 lot more deals. Rather than having your money in for 30

1 years, you would be in for two, two and a half years.  
2 Bridging the equity from the investor will allow more  
3 equity proceeds, they can pay more for the credits if they  
4 pay their money in later.

5 And to Mr. Vasquez's point on protection on the  
6 construction side, the construction lender will be in  
7 there also along with your money, and typically the  
8 construction lender will require and you can require that  
9 a certain amount of the equity come in at closing, 15  
10 percent or whatever amount of the equity has to come in at  
11 closing, so it's not like the equity investor is not  
12 putting in any money at closing.

13 MR. GOODWIN: Any other comments or questions?

14 (No response.)

15 MR. GOODWIN: If not, I'll call for a vote on  
16 the motion. All in favor say aye.

17 (A chorus of ayes.)

18 MR. GOODWIN: All opposed?

19 (No response.)

20 MR. GOODWIN: Motion passes.

21 Before we move on, we're going to end up having  
22 to take about a 30- to 45-minute recess for Beau to visit  
23 with staff over some issues, and then we'll come back and  
24 cover item 1(q) and item 8(a) and 8(b). So I think right  
25 now it is 12:15. Let's reconvene back at 1:00 p.m.

1 (Whereupon, at 12:15 p.m., a brief recess was  
2 taken.)

3 MR. GOODWIN: We'll reconvene, and we'll start  
4 with item 1(p) that we pulled off the consent agenda, 1(p)  
5 Flora Lofts.

6 MS. HOLLOWAY: Item 1(p) is presentation,  
7 discussion and possible action on a determination notice  
8 for housing tax credits with another issuer, so this is a  
9 4 percent deal. The application was submitted to the  
10 Department on May 8, the reservation from the Bond Review  
11 Board was issued on the 26th, and will expire on the 23rd.  
12 The proposed issuer of the bonds is the Dallas Housing  
13 Finance Corporation.

14 The applicant disclosed the presence of  
15 undesirable neighborhood characteristics, specifically  
16 that the proposed site is located in a census tract or  
17 within a thousand feet of a census tract in an urban area  
18 where Part 1 violent crime rate exceeds 18 per 1,000,  
19 according to Neighborhood Scout. Local police beat data  
20 indicates that the Part 1 violent crime rate within the  
21 census tract is lower and that it continues to drop such  
22 that staff believes the site should be found eligible.

23 A little bit about the project. Flora Lofts is  
24 proposed to be constructed in downtown Dallas. It  
25 involves the new construction of 52 units, of which five

1 will be rent an income restricted at 50 percent of AMI, 38  
2 will be rent and income restricted at 60 percent of AMI,  
3 the remaining nine units will be market rate with no rent  
4 and income restrictions. The proposed development will be  
5 a condominium structure part of the larger high-rise  
6 development, which is a separate condominium from our tax  
7 credit development, in a larger high-rise development in  
8 the arts district in downtown Dallas. It is anticipated  
9 that other floors within the high-rise will contain retail  
10 and residential uses as well as structured parking.

11 While the development will serve the general  
12 population, the units are planned to be offered as living  
13 space for local artists. The lofts will have common areas  
14 throughout each of the residential floors for resident  
15 use. The proposed development is in an area that's  
16 heavily developed with a variety of uses and has easy  
17 access to public transportation, including the Dallas Area  
18 Rapid Transit, as well as large employment hubs.

19 Adjacent to the property to the north is the  
20 Museum Tower which is luxury development. The subject  
21 property is unique in that it has a generally high  
22 proportion of apartment complexes or high-rise apartments,  
23 while others tend to have more of a mix of housing types  
24 and real estate. The subject census tract has multiple  
25 market rate properties. The only other affordable

1 property within that census tract was completed in 2009.

2 The applicant's portfolio through PPR is  
3 considered to be a small category one and previous  
4 participation was deemed acceptable by EARAC without  
5 further review or discussion. The applicant provided a  
6 letter of support dated March 29, 2013 from Senator Royce  
7 West. The letter was submitted previously as part of the  
8 competitive housing tax credit application in 2013. That  
9 application was awarded and those credits were returned  
10 later.

11 Staff recommends issuance of a determination  
12 notice for 4 percent tax credits in the amount of  
13 \$673,756, subject to underwriting conditions, including  
14 receipt and acceptance before the determination notice of  
15 a possible structure of the units and buildings that  
16 conform to Section 42 with respect to minimum set-aside  
17 requirements and any other related building designation  
18 issues, and receipt and acceptance by cost certification  
19 is an executed 40-year parking agreement for the 31 spaces  
20 designated for our development.

21 I'll be happy to answer any questions.

22 MR. GOODWIN: Any questions?

23 (No response.)

24 MR. GOODWIN: I see that we have some people  
25 that want to speak. Do we have a motion to hear comments?

1 MS. BINGHAM ESCAREÑO: So moved.

2 MR. GOODWIN: Second?

3 MS. THOMASON: Second.

4 MR. GOODWIN: Moved and seconded. All in favor  
5 say aye.

6 (A chorus of ayes.)

7 MR. GOODWIN: Okay.

8 MR. GEHEB: Phil Geheb from Munsch Hardt.  
9 We're only here to answer any questions you may have, so  
10 just let us know.

11 MR. GOODWIN: Anybody have any questions?

12 MS. BINGHAM ESCAREÑO: Question. Are you  
13 comfortable with the conditions that staff is recommending  
14 in terms of submitting some kind of proof that the  
15 structure conforms and the other building designation  
16 issues and then the commitment to the parking?

17 MR. GEHEB: We are comfortable with those  
18 conditions.

19 MR. GOODWIN: I'll entertain a motion for  
20 staff's approval.

21 MS. BINGHAM ESCAREÑO: I'll move staff's  
22 recommendation.

23 MR. GOODWIN: Second?

24 MS. THOMASON: Second.

25 MR. GOODWIN: Moved and seconded. Any

1 discussion?

2 (No response.)

3 MR. GOODWIN: All in favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Opposed?

6 (No response.)

7 MR. GOODWIN: Okay.

8 MS. HOLLOWAY: Item 8(a) is presentation,  
9 discussion and possible action on the proposed amendment  
10 of 10 TAC Chapter 11 concerning the Housing Tax Credit  
11 Program Qualified Allocation Plan and directing its  
12 publication for public comment in the *Texas Register*.

13 The Qualified Allocation Plan and Rules  
14 Committee met yesterday to discuss the staff draft of the  
15 QAP. We discussed how we arrived at the draft QAP under  
16 consideration, the timeline for rulemaking and walked  
17 through all of the changes proposed for 2018. It was a  
18 3-1/2 hour long got through it all meeting. There weren't  
19 any changes directed out of the committee meeting that  
20 require changes to the draft posted in the board  
21 materials. That said, some small fine-tuning changes will  
22 be presented in the final rule and committee members may  
23 have changes to propose to the Board based on the input we  
24 received yesterday.

25 I'd like to thank Representative Collier for

1 attending our meeting yesterday. She's the author of  
2 House Bill 3574 that removed educational quality from  
3 scoring. She attended the meeting to discuss those  
4 changes and some of her suggestions for mitigation  
5 measures on the threshold.

6 So during 2017 staff met six times with  
7 stakeholders to discuss the 2018 QAP through our QAP  
8 project. Most of the meeting topics were identified  
9 during the initial planning meeting in December of 2016,  
10 and this is a process we plan to continue in the coming  
11 year as we look forward to the 2019 rules. Beyond the QAP  
12 project meetings, several times were posted to the  
13 Department's online forum so that stakeholders could  
14 comment on aspects of new proposals from staff. We also  
15 met with stakeholder groups, including TAAHP and the Rural  
16 Rental Housing Association, to gain their input.

17 I would also add that we will be continuing, as  
18 part of this project in the coming year, we have regular  
19 meetings scheduled with rural development which is the  
20 USDA side. They're officed up in Temple and we'll all be  
21 meeting on a regular basis to make sure that we're all  
22 meshing well in rules, and that's something that I think  
23 we're all looking forward to.

24 We published an initial staff draft of the QAP  
25 on August 11, and a second draft on August 29. The

1 proposed 2018 QAP is presented today for acceptance and  
2 publication for comment. We've tried to limit changes to  
3 only those that are necessary to clarify issues from this  
4 past round. There are a couple of new items that  
5 generated quite a bit of discussion yesterday and even  
6 those on ones that we've considered in the past.

7 As I mentioned, we have removed educational  
8 quality scoring and tiebreaker items as a result of  
9 legislative action. Requirements for disclosure and  
10 mitigation for schools that don't have a Met Standard  
11 rating remain in the undesirable neighborhood  
12 characteristics section of Chapter 10.

13 So for the rulemaking timeline, on your  
14 approval the proposed 2018 QAP will be posted to the  
15 Department's website and published in the *Texas Register*.

16 Public comment will be accepted between September 22 and  
17 October 12. The final QAP will be presented to the Board  
18 in November for approval, followed by the statutorily  
19 mandated submission to the governor by November 15. Upon  
20 the governor's approval or approval with modifications, no  
21 later than December 1 the adopted QAP will be published in  
22 the *Register*.

23 During the course of yesterday's meeting  
24 several items rose to the top as concerns for committee  
25 members and stakeholders, so rather than going through the

1 whole thing, I thought I would just cover the highlights  
2 from the meeting yesterday and save us all a couple of  
3 hours at least.

4           The program calendar has been modified to  
5 reflect dates for 2018. The only significant change is  
6 that staff is proposing an earlier third party request for  
7 administrative deficiency deadline of May 1. You'll recall  
8 that last year it was June 1 and we received more than 40  
9 RFADs on June 1, and that led to a great deal of  
10 uncertainty as we were headed into awards, and we're  
11 trying to prevent that.

12           Under Section 11.4 on the tax credit request  
13 and award limits, we've added language in subsection (a)  
14 that proposes that applicants must limit their total  
15 credit request to \$3 million by June 29. Without this  
16 change, staff is concerned that an applicant with multiple  
17 applications totaling more than the \$3 million cap will  
18 use the waiting list as a means of insurance to buy time  
19 and hedge against risks or error.

20           We've also removed the 10 percent developer fee  
21 as an allowance. Previously, if a developer received 10  
22 percent or less of the fee, it was not considered in  
23 calculating the cap. Some groups of individuals have used  
24 this allowance to exceed the \$3 million cap, a clear  
25 violation of the spirit of the rule.

1           We initially removed the \$150,000 cap on  
2 consultant fees with an eye toward the market limiting  
3 those costs, but have received comment that without that  
4 limitation some parties may seek to gain the cap through  
5 the consultant fee. So a couple of comments that were  
6 received during the committee meeting that I think are  
7 important, requesting that the applicant tell us which  
8 applications to pull out by June 29. For us, it ties to  
9 our statutory requirement to bring the list of eligible  
10 application to you by the end of the month, so that's how  
11 those two tick and tie. A suggestion was made that that  
12 date should be later in the process, perhaps at  
13 commitment, and I think that that's a change that could be  
14 made through the public comment process if, in fact, we  
15 receive that comment.

16           The other concern that was raised was that the  
17 \$150,000 cap on consultant fees, this is just the number  
18 that's been there. If the number needs to change, that's  
19 absolutely something that we can change, again, through  
20 that comment period with some substantiation. I mean, I  
21 think if we just get a comment that says it should be half  
22 a million dollars, you are going to need a little more  
23 information behind that to make that change, but that's  
24 absolutely something that can come through public comment.

25           MR. VASQUEZ: Marni, to clarify, that was per

1 project, not across the board.

2 MS. HOLLOWAY: Right, not across the board.  
3 There was a concern that we were capping consultants at  
4 \$150,000 for all projects. If a single consultant did all  
5 the applications, that would be fine.

6 Moving to 11.7 on tiebreakers, staff has  
7 removed two previous tiebreakers and added a new one, and  
8 we've provided some clarification regarding measurement by  
9 adding language that better describes the boundaries of a  
10 development for this purpose. Tiebreakers regarding the  
11 menu items of opportunity index, so the extra opportunity  
12 index items, has come out simply because it created  
13 such -- and the bulk of our RFADs last year was on those.  
14 And the ratings, of course, for elementary, middle and  
15 high school have been removed due to legislative action.

16 A new tiebreaker regarding underserved places  
17 or if located outside of a place, counties has been  
18 proposed as the third item. This item would count the  
19 total number of tax credit units and divide that number by  
20 the total population, which is something that we already  
21 do for our site demographics reporting. The proposed  
22 development with the lowest score for this calculation  
23 will win the tiebreaker. Staff believes this tiebreaker  
24 methodology will be an effective means of dispersion.

25 There was quite a bit of conversation about

1 some of the other tiebreaker items that we have not  
2 changed. Urban core is one that some folks like and other  
3 folks don't like. There were some suggestions around  
4 reordering them and moving for this distance, which is the  
5 last one, up the list of the tiebreakers. My concern with  
6 doing that, with moving distance up is that that will  
7 always be the first one, and so these other items that are  
8 in the list that we have decided as a group have value,  
9 like the lowest concentration, we would never get there if  
10 distance was up at the top.

11 Also, on section 11.9, so headed into the  
12 competitive criteria, under general information at  
13 subsection (a) we've added language clarifying boundaries  
14 and measurements. Mr. Braden had concerns with some of  
15 our language, both here and in the tiebreaker section,  
16 that we need to try to clarify a little bit, and I think  
17 that we can get there.

18 In underserved area, the requirement that a  
19 census tract fall entirely within the boundaries of an  
20 incorporated area remains true for subparagraph (e). This  
21 is the five-point scoring item which staff refers to as  
22 the flower. In 2017 that paragraph (e) item was limited  
23 to places with populations of 300,000 or more, but for the  
24 2018 cycle, staff has lowered the population floor to  
25 150,000. This will increase the number of eligible cities

1 from eight to eighteen. So this five-point scoring item  
2 for underserved area, your site is in this census tract  
3 and then every census tract around it does not have a  
4 development in it.

5 We've received some question about  
6 rehabilitation deals and how those are considered. We  
7 will be inserting language into this item that says if  
8 you're a rehab deal, you don't count against yourself  
9 because you're already there, so we're not going to make  
10 you say, well, I'm already here so I can't get this five-  
11 point item.

12 Tenant populations with special housing needs,  
13 participation in the Section 811 Project rental assistance  
14 program is back in the QAP as a scoring item rather than  
15 threshold as it was last year. The specific requirements  
16 of the 811 Program are in the proposed 10 TAC Chapter 8,  
17 which was approved on the consent agenda today.

18 On proximity to urban core, we have lowered the  
19 population threshold that qualifies a city for points from  
20 300,000 minimum to 200,000. This increases the number of  
21 qualifying cities from eight to thirteen. We focused on  
22 three criteria to determine where to set the population  
23 threshold: that would be population and population  
24 growth, so growing cities; the presence of low to moderate  
25 income jobs; and the physical attributes of those cities'

1 cores. That scoring item is still worth five points.

2 On commitment of development funding by local  
3 political subdivisions, there was a change in the last  
4 couple years QAP based on Senate Bill 1316 from the 84th  
5 Legislature. That bill included language that made the  
6 commitment of funding amount de minimis only for 2016 and  
7 2017. So while Texas Government Code reads that the  
8 subsection will expire September 1, 2019, subsection (e)  
9 states that this de minimis provision applies for the 2016  
10 and 2017 qualified allocation plans.

11 Because over the last two years many  
12 applications have included local political subdivisions  
13 providing something of value equal to ten dollars or even  
14 a dollar, staff has proposed \$500 for urban developments  
15 and \$250 for rural developments. Mr. Vasquez thinks the  
16 numbers should be much higher.

17 On concerted revitalization plan, other types  
18 of urban revitalization plans which may not be called a  
19 concerted revitalization plan but fit the description in  
20 the rule will now be allowed. We are requiring that the  
21 plan be current at the time of application and continuing  
22 for three more years. We've also added language that  
23 allows plans with cities that cover more than one distinct  
24 area to submit resolutions for each plan or area rather  
25 than limiting the city to one per year.

1           Under readiness to proceed, we have been trying  
2 to get to a readiness to proceed item for some time, but  
3 have struggled with finding a structure that isn't  
4 punitive if an applicant is not able to begin construction  
5 by the deadline. Staff has proposed the addition of a  
6 scoring item that will not necessarily affect applications  
7 in the 2018 competitive round but will affect the scoring  
8 of apps in the 2019. If an application that receives an  
9 allocation can commence construction by the last business  
10 day of the calendar year, then an individual associated  
11 with that application can add a point to any one  
12 application they are involved in for the 2019 cycle.

13           This was not a real popular item. As Ms.  
14 Bingham said, people don't seem to like carrots. We were  
15 looking for a carrot and it was not real popular. I would  
16 imagine we'll receive comment on requesting that it be  
17 removed.

18           Adaptive reuse or rehabilitation cost per  
19 square foot. Staff has proposed removing the cost of  
20 acquisition on a cost per square foot basis from this  
21 scoring item. Instead, applicants will provide hard costs  
22 per square foot for the purposes of this item in  
23 subparagraph (e), thus the numbers are lower, but again,  
24 this is because we've removed acquisition costs. This  
25 change came out of a concern that our amounts are not

1 indicative of real costs at the request of the Rural  
2 Rental Housing Association.

3           There was a good deal of comment about this  
4 yesterday. Our numbers may not be where they should be,  
5 so the dollars per square foot or the measurement about  
6 the size of the unit. These are things that can be  
7 adjusted through public comment, so I would expect that we  
8 would receive some comment on those.

9           Staff recommends that the proposed amendments  
10 to the 10 TAC Chapter 11, the Qualified Allocation Plan,  
11 be approved for publication in the *Texas Register* for  
12 public comment.

13           MR. GOODWIN: Do I hear a motion to forward  
14 staff's recommendation?

15           MS. HOLLOWAY: I'm sure that there are people  
16 who have things to say.

17           MR. GOODWIN: I know we're going to have  
18 comments, but I'll look for a motion to approve staff's  
19 recommendation before we start listening to comments.

20           MR. ECCLES: Well, and to that end, if there  
21 are Board members who would like to move to change staff's  
22 recommended like in any provision before it goes out for  
23 publication, this would be their opportunity. Again, that  
24 would just be to change the draft that's going to the  
25 *Register* and put out for public comment. Rather than

1 moving to accept staff's draft.

2 MR. GOODWIN: Then let's move for a motion to  
3 hear comments.

4 MS. BINGHAM ESCAREÑO: So moved.

5 MR. GOODWIN: So moved. Second?

6 MR. VASQUEZ: Second.

7 MR. GOODWIN: All in favor say aye.

8 (A chorus of ayes.)

9 MR. GOODWIN: Before we start with public  
10 comments, are there any Board members who want to make  
11 comments?

12 MR. BRADEN: Well, I had a couple of things  
13 that I was going to mention, and no doubt it's going to  
14 come out as part of some of this.

15 So on Section 11.9 I guess where maybe it's  
16 going to come up, and it's page 19, I think, of this  
17 report where the new language was added. So we're adding  
18 new language now that when we're measuring these locations  
19 it's from boundary line to boundary line, and I think  
20 there was some discussion of whether that was an  
21 appropriate measurement. And there was some discussion  
22 yesterday about whether should there be a designated point  
23 on the site that the measurements move from. I think  
24 that's open to discussion and we can talk about that.

25 But I do think that the language as written is

1 somewhat self-contradictory and I have some edits to that  
2 first sentence of the language, but I think at a more  
3 substantive level, we ought to make sure that the Board is  
4 comfortable the way we're going to measure these things is  
5 from boundary line to boundary line as opposed to a point  
6 on the site for accessibility purposes and measured along  
7 that. That's one question or comment I had.

8           And then on the readiness to proceed, and maybe  
9 we can wait until we get comments as part of the  
10 rulemaking process, but I'd probably advocate for deleting  
11 that now. I think that's a fairly hard thing to police  
12 and work, and I agree with the idea, but in terms of  
13 giving somebody a point in next year's allocation, I don't  
14 know if that's the right carrot. I understand it's kind  
15 of hard to reward or penalize that behavior and so I  
16 commend the staff's looking for something, but I'm not  
17 sure that's the right solution.

18           Those are the two general comments that I had.

19           MR. GOODWIN: Other Board comments?

20           (No response.)

21           MR. GOODWIN: Public comments?

22           MS. SISAK: Yes. Good afternoon, Board, Board  
23 Chair. My name is Janine Sisak. I'm here today on behalf  
24 of the TAAHP QAP Committee. I just want to take a quick  
25 opportunity to thank staff and Marni and Patrick in

1 particular for all their efforts in getting a draft posted  
2 to the board book last week that didn't have a huge amount  
3 of surprises. If some of you remember from last year,  
4 there was a little consternation when the board book was  
5 posted before this meeting and there were a lot of kind of  
6 new concepts. So we really appreciate staff's working  
7 through the summer and working through a heavy load of  
8 RFADs, as they call it, while also getting a draft out to  
9 us slightly earlier than before, which was an interest  
10 expressed by a lot of our stakeholders. So let me take an  
11 opportunity to thank staff on that.

12 And additionally, I look forward to working  
13 with staff in the coming year on some more kind of broader  
14 policy issues. The two things that I would like to work  
15 on that I mentioned yesterday were coming up with a new  
16 scoring concept to go into the scoring for next year that  
17 creates another opportunity for the scoring of  
18 applications not to be so flat. I think that's really  
19 important at this stage, especially in light of the  
20 educational quality points coming out of the QAP.

21 Additionally, I don't know, I had to leave  
22 early yesterday, I don't know if you talked about the  
23 Multifamily rules, but I really would like to visit  
24 undesirable neighborhood characteristics again. Marni has  
25 said several times that it hasn't really stopped any

1 developments going forward, which is great, but it is kind  
2 of eating up a lot of staff and applicant time and money  
3 in slashing through that, and if everybody kind of gets  
4 through it anyway, why are we spending valuable resources  
5 through that process.

6 Those are the two things I'd like to work with  
7 staff on in the coming year. Thank you.

8 MS. MEYER: Board, thank you for the  
9 opportunity. My name is Robbye Meyer, I'm with Arx  
10 Advantage Consulting.

11 Just two things. One, to address Mr. Vasquez  
12 from yesterday, in your comment about the big stick, and I  
13 understand that. Part of one of the questions that you  
14 had about the local political subdivision funding and  
15 having skin in the game, I started to speak yesterday and  
16 I thought I'm just going to let it go, but when that was  
17 first put in the QAP, or in statute, actually, back in  
18 2001, the agency was under fire, and the advocates in the  
19 development community came forth and that was put in so  
20 that there would be some local control.

21 Since that time we've also had added in local  
22 resolution for support of the application, QCP is now in  
23 there, support from your state rep and state senator at  
24 one time, the senators have come out. So a lot of things  
25 have gone in the QAP or in statute that are required, so

1 that's one of the reasons why the state legislature made  
2 that a little less a priority in the last legislative  
3 session and so it went down to a de minimis amount because  
4 there are other things in the QAP or in statute that make  
5 local control a little bit more important. So I'd just  
6 kind of give you a little bit of background.

7 One thing that I just want to introduce, and  
8 I'm not really a strong advocate of forward commitments,  
9 but in 2012 our language for forward commitments was  
10 struck, and this is a prime opportunity to ask the  
11 governor to be able to put that language back in. And Ms.  
12 Bingham will remember the forward commitments. Like I  
13 said, I'm not a supporter of forward commitments and when  
14 I was with the agency I didn't like it then and I don't  
15 like it now. However, this past year I had a 2016 deal  
16 that my client also had deals in Mississippi and  
17 Mississippi had the ability to forward commit additional  
18 credits for the three deals in Mississippi, and had my  
19 client not been able to get the additional on the  
20 Mississippi deal, we would have lost our Texas deal  
21 because we could negotiate with our syndicator on pricing  
22 with those Mississippi deals.

23 So I ask that we consider putting language back  
24 in the QAP and asking the governor to allow that language  
25 under special circumstances and not give the Board willy-

1 nilly, let's pull something from the bottom of the list to  
2 put it up to be awarded. But in catastrophic events like  
3 Harvey, we haven't felt the full effects of Harvey yet,  
4 but I can guarantee you they're coming and we're going to  
5 have construction costs and things that are going to  
6 skyrocket, and it would be nice for the Board to have the  
7 ability to rescue some of the deals that are going to come  
8 before you later on.

9 Thank you very much.

10 MR. COMBS: Ryan Combs with Palladium.

11 I did want to mention just very briefly on Mr.  
12 Vasquez's comment about local political subdivision  
13 funding. You know, I work for Palladium USA and we're a  
14 developer and we work primarily in Urban Region 3, Dallas-  
15 Fort Worth and a lot of those areas, and we have been a  
16 market rate developer and now we are doing affordable and  
17 we've been doing that for five-six years now and have had  
18 a lot of success. And we know that in North Texas there's  
19 just a dramatic need for housing, for workforce, for aging  
20 people, I mean, tax credit housing, there's just an  
21 incredible need all over North Texas.

22 One of the things that we fight constantly is  
23 we first, all of us developers in this room, look for good  
24 real estate and so we're looking for the path of growth.

25 We have to hit these rules, we have to do these things to

1 be competitive, but bottom line is we're looking for good  
2 real estate, and so we're going to places that people want  
3 to be, people want to live, where they want to work. And  
4 one of the big challenges that we have is not in my  
5 backyard, we're here but we don't want those people here  
6 kind of thing. And when we go and we ask for resolutions  
7 of support from a city, that's a big ask and it puts the  
8 elected officials in the hot seat to potentially do  
9 something that is politically volatile.

10 A lot of times when you go to high opportunity  
11 areas and you say I need a resolution of support, and oh,  
12 by the way, I need you to give me a whole bunch of money.

13 The city wants to support it but then that becomes such a  
14 political hot potato that it's very, very difficult to  
15 overcome that.

16 And so I just want to put that out there that I  
17 do think that having that in the QAP is good, I don't  
18 think it being so large that it becomes such a political  
19 hot potato that you can't go to a lot of places that need  
20 it just because the NIMBY and the political issues that it  
21 brings out.

22 The other issue that I wanted to bring up very  
23 briefly is I completely understand and am fully on board  
24 with Brent Stewart and staff's desire to want there to be  
25 a readiness to proceed. I would love for our

1 applications, and I'm sure every developer in this room  
2 would agree that we would all love for our applications to  
3 be more fully vetted, more fully baked when we turn in our  
4 full applications March 1. As mentioned yesterday in the  
5 work session, there are just countless reasons as to why  
6 applications get delayed and are not able to close within  
7 30 days after you get the award. You can't name all of  
8 those reasons, it's too many, but what we can do is we can  
9 incentivize, taking some of those roadblocks out in front.

10 I mentioned yesterday on the readiness to  
11 proceed, instead of taking it out, instead of forward  
12 committing points, if we were to rewrite that rule to say  
13 something like one point given to applications that can  
14 prove a level of readiness to proceed by demonstrating  
15 that appropriate zoning for the proposed use in place at  
16 the time of the full app, what that would do is that would  
17 incentivize me and every other developer to go work on  
18 sites earlier, spend some money and time and effort to go  
19 put zoning in place that can take months and months and  
20 months, I can do that, I can justify doing that if I know  
21 there's a reward for that to happen. So that's just a  
22 proposal.

23 Thank you so much.

24 MR. GOODWIN: Thank you.

25 MS. RICKENBACKER: Hi. Donna Rickenbacker.

1           Mine is a followup to what Ryan said with  
2 respect to the readiness to proceed. This is if  
3 everything holds in accordance with our current draft  
4 that's going out for publication it's another year of flat  
5 scoring, very unfortunate. That being said, this  
6 readiness to proceed provision, as drafted, nobody likes.

7       So this is the time to come up with some draft language  
8 that we can put in the QAP that's going to go for  
9 publication to get comments on that will provide a scoring  
10 for deals that are more cooked and ready to proceed to go  
11 forward. Of all times, we really do need a provision like  
12 this, not only because of the flat scoring but because of  
13 the hurricane. We need to be in a position to incentivize  
14 people that can get the units on the ground sooner than  
15 later.

16           And I do encourage the Board to consider  
17 redrafting this provision such that you can seek comments  
18 in a format that then would become a logical outgrowth of  
19 the provision so that we can incorporate a ready to  
20 proceed provision into the QAP for 2018.

21           Thank you very much.

22           MR. GOODWIN: Thank you.

23           MR. BOWLING: Hi. I'm Bobby Bowling. I  
24 represent TAAHP, I'm the immediate past president. Our  
25 president, Nicole Asarch could not be here today, so I'm

1 in her stead.

2 I'm speaking to support what Robbye Meyer spoke  
3 to you all about is to put the forward commitment tool  
4 back into the draft. I think what she's talking about is  
5 all relatively new, it's only been a week since the  
6 hurricane hit, but I think you all are hamstringing  
7 yourselves by not putting that tool out there in the QAP.

8 It doesn't say you have to award forward commitments.

9 I'm actually going to speak on the open forum  
10 about a discussion item that I'm going to request that you  
11 place on for your next month's agenda to talk more  
12 specifically about some of the things that are going to  
13 happen with our price increases. Even to me like in El  
14 Paso, like for example, I got a letter from my concrete  
15 supplier telling me that his price is going up \$30 per  
16 yard effectively immediately. I know that's because he's  
17 worried about his cement supplier in Mexico filling orders  
18 to rebuild Houston and the Gulf Coast. So we're all going  
19 to see on our awarded deals tremendous price shocks in  
20 both labor and materials and delays. Again, I'll speak to  
21 that at open forum and ask you to place an agenda item  
22 specific to that next month.

23 But for now, this QAP draft, I agree with Ms.  
24 Meyer, what she said, please place back in the ability for  
25 you all to forward commit in this draft. It doesn't

1 finalize it today but at least we can have the discussion,  
2 you can have the discussion with the Governor's Office and  
3 you can have your internal kind of thought process as to  
4 whether that's a good idea or not. But I'm asking you,  
5 again, to please put that in the draft so you can have  
6 that discussion.

7 Thank you.

8 MR. GOODWIN: Thank you.

9 Comment?

10 MR. ECCLES: Bobby, my just off-the-cuff, legal  
11 reaction to that is that which the governor removes, the  
12 governor is going to have to put back in. I think that  
13 putting it back into our rules, despite the fact that it  
14 was directed by the governor to come out of the rules, I'm  
15 not really sure that that would be an appropriate use of  
16 this.

17 MR. BOWLING: Could we call his office and ask  
18 him if it's okay?

19 (General talking and laughter.)

20 MR. BOWLING: Just something to consider.

21 Beau, let me ask you a question, a legal  
22 opinion, if it's not in there, can it not be placed in  
23 when you vote on the final QAP?

24 MR. ECCLES: The unique rulemaking process that  
25 the QAP goes through makes it so that once it goes to the

1 Governor's Office, he can remove or add stuff, so that's  
2 how that would work.

3 MR. BOWLING: Okay. I understand what you're  
4 saying. Thank you.

5 MS. BINGHAM ESCAREÑO: Bobby, and I really  
6 appreciate that from you and Robbye both, but if that were  
7 off the table, is it worth it for you guys and staff to  
8 put your heads together and see if there's any other  
9 language or solution? I appreciate this and there are  
10 people in this room that know that we used to administer  
11 the disaster relief related housing which, I think  
12 everybody would agree is horrendous and bureaucratic and  
13 heartbreaking to see areas that are in need go a long  
14 time, and then the ripple effect that that has for the  
15 rest of the housing market, dealing with what's mentioned  
16 today, supply shortage issues and labor issues and that  
17 kind of thing.

18 But I mean, my gut reaction is no way is  
19 forward going to come back, but I don't know, I can't  
20 predict the future, and maybe somebody will decide that's  
21 a vehicle. But in the vacuum of that as a vehicle to  
22 accomplish what I think what you guys have is a noble and  
23 shared priority, maybe it's worth putting our heads  
24 together and seeing if we can figure out some other  
25 language.

1 MR. BOWLING: Yes, ma'am. And I appreciate  
2 you've been on this Board for a long time, so you remember  
3 what your Board did, the TDHCA Board back in -- I actually  
4 did some research on Katrina and Ike -- in '04, '05 and  
5 '06, you took credits from '07, '08 and '09 to supplement  
6 those deals because they had tremendous price shocks. It  
7 wasn't just hurricanes back then, it was also the housing  
8 bubble, and so from application to the time we started  
9 construction, prices were increasing easily 10 percent  
10 into that twelve-month period over that period of time.

11 So I do have some ideas that I'm going to talk  
12 about in open forum that aren't posted here in addition  
13 to, but I just was presenting this and I jumped to come  
14 speak to this because I think you should have as many  
15 tools as possible available to you. But without a forward  
16 commitment, we have another idea too.

17 So thank you.

18 MR. GOODWIN: Any other questions?

19 MS. BOWYER: My name is Teresa Bowyer. I'm  
20 with Herman & Kittle Properties.

21 I just wanted to respectfully disagree with  
22 what Donna said earlier. I think the readiness to proceed  
23 item has the potential to be really detrimental to a  
24 variety of different types of projects and disincentivize  
25 things with a mix of sources. And Houston, it's great to

1 say that because, of course, there's no zoning, you don't  
2 have to work through that in the same respect that you do  
3 in Austin. And so I think doing that is really going to  
4 box in what type of projects you're going to see and  
5 you're not going to have as much diversity.

6 And I think Sarah André was the one yesterday  
7 who said there's already a big stick, there's already a  
8 mechanism, we lose our credits if we don't get it placed  
9 in service by a certain date. It behooves us all to get  
10 it funded, closed and constructed as soon as possible. So  
11 I just urge you to take that language out, that language  
12 out. I think it has the potential to go the opposite way  
13 of what it's intended to.

14 Thank you.

15 MR. GOODWIN: Thank you.

16 Any other comments?

17 (No response.)

18 MR. GOODWIN: Paul, did you want to make some  
19 motions as it related to the two items or any of the  
20 additional items that were brought up?

21 MR. BRADEN: And maybe let me ask Marni  
22 something. I haven't heard anybody come up and propose  
23 this points thing that we talked about yesterday, so let's  
24 assume we leave boundary to boundary in place in 11.9, my  
25 edits end up being deleting four words from one sentence

1 and changing the order.

2 MS. HOLLOWAY: The entire site, that language?

3 MR. BRADEN: Yes. Can I just give you my  
4 suggestion? I guess we should do that. Should I give my  
5 suggestions here? Let me find the page again. So it's in  
6 Section 11.9. What I would suggest is that new language  
7 that's added in 11.9(a), that first sentence that  
8 currently reads: "All measurements will include the  
9 entire site, including ingress/egress requirements and any  
10 easements, regardless of how they would be held." My  
11 understanding of what that's supposed to address, I think,  
12 is more clear if we delete the words "entire site,  
13 including" so it reads: "All measurements will include  
14 ingress/egress requirements and any easements, regardless  
15 of how they will be held." And then I would move that  
16 sentence to after the sentence to where you have "distance  
17 to be measured from the nearest boundary of the  
18 development site to the nearest boundary of the property  
19 easement" so it comes after that. Because I think that's  
20 at least the clarifying sentence where you talk about  
21 distances are to be measured from the nearest boundary to  
22 the nearest boundary, and then you have that sentence  
23 where it talks about including driveways and other things  
24 too.

25 MS. HOLLOWAY: And if you'll accept a change to

1 that and something we talked about yesterday was adding  
2 language that says "For purposes of this section."

3 MR. BRADEN: In 11.9?

4 MS. HOLLOWAY: We talked about it in tiebreaker  
5 also.

6 MR. BRADEN: That's fine.

7 And in terms of readiness to proceed, I'll  
8 defer to the Board. It sounds like we're going to get  
9 input from that section and I think, again, everybody  
10 seems like it's a good idea, it's just not the right stick  
11 or the right carrot. So maybe it's easier if we leave  
12 something in place and we can get input, but I'm flexible  
13 either way in terms of removing that or leaving that.

14 MR. GOODWIN: Why don't we take the measurement  
15 issue first and do a motion to change the measurement  
16 language to your proposed language.

17 MR. BRADEN: I make a motion to change the  
18 language in 11.9 to what I just described.

19 MR. GOODWIN: And a second?

20 MR. ECCLES: Including the for purposes of this  
21 rule only?

22 MS. HOLLOWAY: For purposes of this section.

23 MR. ECCLES: This section.

24 MR. BRADEN: Yes.

25 MR. GOODWIN: And a second?

1 MS. BINGHAM ESCAREÑO: I'll second that.

2 MR. GOODWIN: Any discussion about that?

3 (No response.)

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

6 (A chorus of ayes.)

7 MR. GOODWIN: Opposed?

8 (No response.)

9 MR. GOODWIN: Okay. Now, what about readiness,  
10 do you want to strike readiness to proceed, Paul, or leave  
11 it in?

12 MR. BRADEN: I'll ask the other committee  
13 members who listened to the whole discussion yesterday. I  
14 don't know if you guys have a feeling for it.

15 MS. BINGHAM ESCAREÑO: I think I lean towards  
16 striking. I do appreciate, who was it, Ryan, that  
17 suggested zoning in place, but then what I just heard from  
18 Teresa is then there's going to be some markets that  
19 that's not even applicable, right, the whole zoning thing.

20 So I think if you're asking my impression after feedback  
21 yesterday, I would lean toward striking it. I think it's  
22 a good goal, I think everybody would like some kind of  
23 incentive and believe that there are plenty of  
24 disincentives already in place, I just don't know that  
25 we've landed on the correct one yet.

1 MR. GOODWIN: Other opinions from Board  
2 members?

3 MR. VASQUEZ: I could see striking it, but also  
4 leaving it as we're going to expect a lot of public  
5 comment on it to incorporate some of these ideas.

6 MS. HOLLOWAY: And that's true. If we strike  
7 it, because this is an amendment, what we publish for  
8 comment wouldn't include that language at all, there  
9 wouldn't be a readiness to proceed at all, so there  
10 wouldn't be any comment received about potential readiness  
11 to proceed measures.

12 MS. BINGHAM ESCAREÑO: My concern was would it  
13 be considered a material change if you had a lot of public  
14 comment that said this isn't a workable solution.

15 MS. HOLLOWAY: Then we absolutely would strike  
16 it.

17 MR. ECCLES: We can delete it. I think we kind  
18 of talked about the options. If you remove it here and  
19 then put it out for publication, you can't add a readiness  
20 to proceed rule back in. Further, though, if you put it  
21 out as it currently exists, you are generating about a  
22 million comments on how bad it is and then probably some  
23 will say what it should be is a carrot in a different way,  
24 for the current cycle it should be one point and making it  
25 for zoning, and I'm not really sure that that really

1 naturally grows out of this language. So if there is a  
2 proposal for a readiness to proceed that is more likable  
3 by the Board at this point, that might be the only way  
4 that you could get to something that resembles the  
5 mechanism on a ready to proceed that could naturally grow  
6 out of it and then be adopted as a final rule.

7 How's that for nebulous lawyer advice?

8 MR. BRADEN: And sadly, I understood what you  
9 said.

10 (General laughter.)

11 MR. BRADEN: So after yesterday's committee  
12 meeting, and actually I read Donna's comments again  
13 because she has sent in written comments dealing with this  
14 section, and there were some components of it that I like,  
15 but the problem is the zoning issue that was just brought  
16 up, Donna also brought up. If you added something in  
17 place that you get a certain amount of points at the time  
18 of adoption, the development site is zoned to allow for  
19 the proposed development, what do you do with those  
20 entities that don't have zoning. And we had somebody  
21 yesterday that came in and said zoning takes a year,  
22 that's just the way it is in Austin, or whatever city  
23 they're talking about.

24 I guess my inclination is I think everybody  
25 recognizes it's a problem or it's something we'd like to

1 see addressed, so maybe we should leave it in, but I guess  
2 the result is we're not going to find the right carrot  
3 because really the carrot right now is what's in there.  
4 You could probably change the point to something else but  
5 you're kind of dealing with it right then.

6 MR. ECCLES: And I'll add to that another  
7 scenario that I've certainly seen over the years, folks  
8 say, well, look, this is a great site but I don't have the  
9 ability to change zoning on it yet, I don't have that  
10 amount of control over the site, and before you close on  
11 it, they don't want it changed over to multifamily. And  
12 if you happen to fortuitously find a site that is already  
13 zoned multifamily, it may be a totally different deal, but  
14 does that warrant excluding the other site from the  
15 ability to get that point just because they happened  
16 across a site that doesn't just happen to have the right  
17 zoning yet.

18 MS. HOLLOWAY: So if I may, the suggestion that  
19 Brent just whispered in my ear is add the zoning item here  
20 under the readiness to proceed, maybe add something else  
21 that we think of, and then use the public comment period  
22 to sort of winnow out what is acceptable and what will  
23 work and what won't. And ultimately, what we're trying to  
24 get to is receiving really good strong applications in  
25 this program that's oversubscribed by double.

1                   And so Beau, what is your lawyerly thought on  
2 that?

3                   MR. ECCLES: Are you saying add a second  
4 readiness to proceed?

5                   MS. HOLLOWAY: Like a B that's about the  
6 zoning.

7                   MR. BRADEN: Have a laundry list, we have  
8 several things, and then if we end up editing some out,  
9 would it still be in the nature of the rule that we could  
10 edit it down.

11                   MR. ECCLES: You could do that, yes. So should  
12 we just like have an open mic riff of readiness to  
13 proceed? Marni, if you could lay down a fat B for us,  
14 that would be great.

15                   (General laughter.)

16                   MS. HOLLOWAY: I got nothing left in me right  
17 now.

18                   But it's a potential, and the other potential  
19 is if the Board believes that this is something that staff  
20 should devote some time to, then we absolutely can do that  
21 over the coming year and come in for 2019 with something  
22 that hopefully there's a little more buy-in on it. We can  
23 put this one and we can put the zoning thing and anything  
24 else up on forum and we could go that route, but that  
25 means that the 2018 applications aren't going to be

1 subject to that measurement.

2 MR. IRVINE: I apologize. I was across the  
3 hall testifying to Urban Affairs and I'm kind of jumping  
4 in late to this discussion.

5 I've long been a big proponent of finding a way  
6 to craft incentives for readiness to proceed, but I'm a  
7 little nervous about the concept of having a laundry list  
8 to be winnowed down, because reality is folks are already  
9 looking for sites and the less uncertainty we can inject  
10 in this process, the easier it will be for them.

11 MS. HOLLOWAY: True.

12 MR. IRVINE: I do think that having your zoning  
13 in place is a really great thing and that to me makes a  
14 ton of sense.

15 MS. HOLLOWAY: The conversation that we were  
16 having, part of it was Houston there's no zoning, Austin  
17 takes forever to get zoning, so how to sort of normalize  
18 that zoning measurement or what's an alternative to  
19 zoning, is it zoning or something else.

20 MR. VASQUEZ: And just to be fair, in Houston  
21 there's no zoning per se but there's all kinds of permit  
22 issues that effectively is zoning control.

23 MS. HOLLOWAY: True.

24 MR. GOODWIN: What are the readiness issues  
25 that you're running into with applications?

1 MS. HOLLOWAY: So today you took up major  
2 issues on three 2016 awards that haven't hit the dirt yet.  
3 So here we are, September of 2017 and they're still  
4 working out their deals.

5 MR. BRADEN: But wasn't that associated with  
6 the collapse of the tax credit market? I mean, we're  
7 talking about more normal things. We want readiness to  
8 proceed barring hurricanes and collapses of the tax  
9 market.

10 MS. HOLLOWAY: I think that there were issues  
11 in the equity markets, yes. I also think that there are a  
12 number of applicants that timely started.

13 MR. GOODWIN: Do you want to leave readiness in  
14 this draft of the QAP? We need a motion to take it out.

15 MR. BRADEN: I guess we'll leave it in for  
16 discussion.

17 MR. GOODWIN: Are there any other items that  
18 you want to modify, Board members?

19 (No response.)

20 MR. GOODWIN: I see we have somebody else who  
21 wants to comment.

22 MR. BRADEN:

23 MR. SCHMIDTBERGER: Thank you. Russ Michael  
24 Schmidtberger. I'm a real estate attorney were in Austin  
25 and also down in Houston, I represent some developers down

1 there.

2 My biggest concern -- Beau, I hear you, I  
3 tracked with you, as a lawyer, everything that came out of  
4 your mouth, I really liked it -- the outgrowth is what my  
5 fear is because the moment this stays in, I'm just curious  
6 if there's a way for the point to change after this.  
7 Because if we carry a point going into next year, I think  
8 that's where that's going to cause problems down the road.  
9 If the normal outgrowth of this does not include keeping  
10 the point when we start to redraft it, I'm worried that if  
11 we keep it in here that we're going to get a lot of  
12 different versions of this and then the point is going to  
13 stay there, and then we're going to be in situations where  
14 this particular sentence isn't cleaned up: "The  
15 application must include designation of the individual who  
16 will use the point in the next competitive cycle and the  
17 additional point may be transferred to other applicants."

18 I don't know who that's going to be. It's like  
19 go give this point to your other application down in the  
20 Valley, give it to the one up in Urban 3, give it to the  
21 guy that's down there in Houston trying to get his deal  
22 done because of hurricane funding now. I mean, I just see  
23 a lot of outgrowth from this that's problematic, and what  
24 I would suggest, humbly suggest, at least, is if we strike  
25 it now, we don't have to worry too much about it, we can

1 bring it up on public comment like for the next year and  
2 the following year and really hone in on it. If it stays  
3 now, the outgrowth may not be what we want, and if the  
4 point stays in there, then the outgrowth might even be  
5 more problematic.

6 I don't know if you guys could address that, if  
7 the point could come out and be changed to a fee waiver or  
8 something along those lines, that might be something that  
9 you think about. Thank you.

10 MR. ECCLES: I can say the fee waiver is not  
11 going to work because that's statutorily linked to the  
12 amount of efforts and refunds, and that's too intertwined  
13 within the system to be waived, as the carrot, the new  
14 carrot.

15 MR. SCHMIDTBERGER: Could the carrot not be a  
16 point, I guess is what I'm saying .

17 MR. ECCLES: You're talking steak knives, we  
18 give out steak knives now.

19 MR. SCHMIDTBERGER: That's what I'm saying,  
20 because if the normal outgrowth of this is not to get it  
21 out of scoring or to not make it be a point category, does  
22 that mean the whole thing has to be struck or does that  
23 mean that the point could be struck out of this and then  
24 it be replaced with something that makes sense as opposed  
25 to a point.

1           MR. ECCLES: Lacking what the tortured analogy  
2 of a carrot would be, it's theoretically possible that  
3 that would be a natural outgrowth. Beyond a point, and  
4 since we can't talk fee waivers, I just don't know what  
5 that incentive would look like.

6           MR. SCHMIDTBERGER: So just to clarify, my fear  
7 is that if we keep it in and we don't strike --

8           MR. ECCLES: Four minutes of public comment,  
9 how about that?

10                   (General laughter.)

11           MR. SCHMIDTBERGER: Exactly. Or like I said  
12 yesterday, a \$500 fee for RFADs. The only thing is that  
13 if it gets truck today, then it comes out and we can keep  
14 talking about. And I think everybody agrees that it's a  
15 great idea; I do too, I think it's a great idea. If we  
16 strike it today, it can become a long-term conversation;  
17 if it stays in, we may have outgrowth that makes it a  
18 scoring item this year. That might be problematic because  
19 people will come up with ideas as to how this one point  
20 will benefit it, and then we may not have a really good  
21 definition of what that means.

22                   So I'm just suggesting in order to avoid all  
23 the comment on this, we strike it today and possibly  
24 revisit the issue going into next year and the following  
25 year. I think it's a great idea but I feel like the one

1 point scoring item in here and keeping it in scoring is  
2 going to show up as problematic in terms of outgrowth  
3 going forward.

4 Thank you.

5 MR. GOODWIN: Thank you.

6 MR. IRVINE: If it goes in the draft as a  
7 scoring item, it would stay a scoring item, and that means  
8 that you could tinker with the criteria to get the score,  
9 but you would still have a scoring item, or pull it out in  
10 its entirety, and either one of those approaches would  
11 have to be supported by specific public comment.

12 MR. SCHMIDTBERGER: Okay. Thank you.

13 MS. BINGHAM ESCAREÑO: Mr. Chair?

14 MR. GOODWIN: Yes.

15 MS. BINGHAM ESCAREÑO: May I make a motion to  
16 strike the readiness to proceed language?

17 MR. GOODWIN: You may. Do I hear a second?

18 MR. BRADEN: Second.

19 MR. GOODWIN: So we have a motion and its  
20 seconded. Comments? Comments about striking readiness?

21 MS. BINGHAM ESCAREÑO: I know I always talk  
22 about work groups, and you are probably drowning in work  
23 groups, but really, almost as soon as you're finished with  
24 this, you'll start brainstorming the 2019 QAP. Right?

25 MS. HOLLOWAY: We'll start for 2019.

1 MS. BINGHAM ESCAREÑO: So maybe the Board just  
2 goes on record as saying that it sounds like this is  
3 universally the concept is supported by everyone in the  
4 community or by the majority, and that it is worth some  
5 extra time brainstorming in the community some opportunity  
6 to Incentivized readiness.

7 MS. HOLLOWAY: We certainly would accept and  
8 welcome direction that we, moving into 2019 and as part of  
9 our 2019 QAP project planning, include readiness to  
10 proceed as one of the topics we take up.

11 MS. BINGHAM ESCAREÑO: I think it will pay huge  
12 dividends to everybody, you know what I mean, in terms of  
13 just everybody, to the state, to the great use of  
14 resources. I don't think we've quite hit on something  
15 that we have a level of confidence will make it through  
16 the draft and public comment.

17 MR. GOODWIN: Any other comments or  
18 suggestions? If not, all in favor say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: Opposed?

21 (No response.)

22 MR. GOODWIN: We will strike readiness.

23 Any other changes you want to make?

24 (No response.)

25 MR. GOODWIN: So we need a motion with those

1 changes to accept to publish into the *Texas Register* the  
2 QAP as modified.

3 MR. BRADEN: So moved.

4 MR. GOODWIN: So moved. Second?

5 MR. VASQUEZ: Second.

6 MR. GOODWIN: Moved and seconded. Any  
7 discussion?

8 (No response.)

9 MR. GOODWIN: All in favor say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: Thank you, Marni, for a great  
14 job.

15 MS. BINGHAM ESCAREÑO: Great job.

16 MR. ECCLES: And I want to point out that  
17 drowning in work groups is the working title of Marni's  
18 biography.

19 (General laughter.)

20 MS. HOLLOWAY: But I have all these great folks  
21 that can be volun-told to man the work groups. That's why  
22 we've got Patrick, and we're very happy to have him.

23 MR. IRVINE: Comment about readiness to  
24 proceed?

25 MS. HOLLOWAY: Yes.

1           MR. IRVINE: I think that in our meetings over  
2 the course of the year everybody has said, yeah, it would  
3 be really great if everybody were really ready to proceed,  
4 but they have gotten prickly when you talked about things  
5 that involved significant additional investment. And I  
6 honestly do not believe there is a way to make a deal  
7 ready to proceed short of spending a fair amount of money  
8 to get it ready to proceed, so I don't see a lot of reason  
9 to have an extended discussion about developing that. To  
10 me, the more useful concept to approach is how do you  
11 sharpen the line and say this is what you said you were  
12 going to do, can you do that, and if you can't do that,  
13 give us the credits back.

14           MR. GOODWIN: Thank you.

15           8(b).

16           MS. HOLLOWAY: Item 8(b) is presentation,  
17 discussion and possible action on proposed amendments of  
18 10 TAC Chapter 10, Subchapter A concerning general  
19 information and definitions, Subchapter B concerning site  
20 and development requirements and restrictions, Subchapter  
21 C concerning application submission requirements,  
22 ineligibility criteria, board decisions and waiver of  
23 rules for applications, and Subchapter G concerning fee  
24 schedule, appeals and other provisions, and directing  
25 their publication for public comment in the *Texas*

1     *Register.*

2             You'll note that there are a couple of  
3 subchapters here that are missing. One of them is asset  
4 management, the other is real estate analysis, those will  
5 follow next month. The real estate analysis rule,  
6 Subchapter D, is in your board book, but it's published as  
7 part of the National Housing Trust Fund allocation plan,  
8 so while that subchapter is in the book, it's in the book  
9 for a different purpose and there are no amendments or  
10 anything, it's just part of that trust fund plan.

11             And also following, next month, I hope I  
12 mentioned, Chapter 12 which is our bond rule and Chapter  
13 13 which is our multifamily direct loan rule, we'll be  
14 talking about all of those next month, to give you  
15 something to look forward to.

16             The uniform multifamily rules contain  
17 eligibility, threshold and procedural requirements  
18 relating to applications requesting multifamily funding or  
19 tax credits. Staff has proposed changes to improve the  
20 efficiency of the funding sources involved and enhance  
21 their effectiveness in achieving policy objectives. The  
22 rulemaking timeline for these subchapters will follow the  
23 QAP.

24             So an important thing to keep in mind as we're  
25 talking about Chapter 10 is that this applies to all of

1 our fund sources. There are some places in Chapter 10  
2 where we say for a 4 percent application or for a direct  
3 loan application, but these are the basic requirements for  
4 all of the fund sources come out of Chapter 10.

5 So in Subchapter A we've made changes to a  
6 couple of definitions. We've modified the administrative  
7 deficiency definition to reflect how staff will evaluate  
8 information. And the supportive housing definition has  
9 been modified to better define how the Department will  
10 evaluate these developments. That supportive housing  
11 definition change was made by a group of people actually  
12 in TAAHP and folks who work on supportive housing, and  
13 staff, that's something that we've spent some time on.

14 Subchapter B outlines the site and development  
15 requirement and restrictions. Under undesirable site  
16 features, language has been added to underscore that even  
17 if an exemption is being requested, mitigation may still  
18 be required. We've also added language to reflect that if  
19 a state or federal agency has minimum separation distances  
20 to the site features listed, then the Department will  
21 defer to that agency and require the same. The list has  
22 been modified to add illegal dumping sites as an  
23 undesirable site feature.

24 So part of what's going on here and what we all  
25 learned in this last year with our concrete crushing plant

1 is that TCEQ has this body of regulation that says you  
2 can't put this undesirable thing next to a house or you  
3 have to be this distance away, so we will be adopting  
4 those distances because they're the experts about how far  
5 away is a safe distance. And so by adding that language,  
6 we're adopting those larger bodies of regulation.

7 Under mandatory development amenities in  
8 10.101, we're modifying the requirement that all units be  
9 wired with phone and data cabling to reflect that it has  
10 to be current technology. And modifications are also made  
11 to the requirement that all units have air conditioning  
12 and heating, and that speaks to the bond transactions that  
13 we approved earlier and the PTACs. We're seeing more and  
14 more deals come in with PTACs and the PTACs improving, so  
15 we are changing up that section.

16 Common amenities. Some of the common amenities  
17 listed in the section have been modified to provide  
18 clarification based on the Department's expectations.

19 Under accessibility requirements, our  
20 requirement regarding visitability has been modified to  
21 reflect the specific features that a unit must have. This  
22 is something that we've been working on for several  
23 months, started from our old rule that was difficult to  
24 administer, and basically what it did, it said if you were  
25 a townhouse development, at least 20 percent of your units

1 of each type had to have a bedroom and a bathroom on the  
2 first floor, which led to all sorts of waivers and floor  
3 plan changes and other issues.

4           What we've done now is basically said there are  
5 no exempt units, everything that is accessible, has an  
6 accessible path to it per the Fair Housing Design Manual,  
7 must be visitable. So it has to have wide enough  
8 doorways, it has to have a bathroom that fits the Fair  
9 Housing design requirements. This is not about creating  
10 additional accessible units, it's just, I think, a way to  
11 get us to a better end product, and actually the  
12 disability community, the folks that I've spoke to are  
13 very much in support of this change and I think it will be  
14 much easier for us moving forward.

15           Subchapter C includes procedural requirements  
16 for submitting an application, including the  
17 documentation, the criteria that would render an applicant  
18 or an application ineligible, how applications will be  
19 prioritized for review, information about Board decisions  
20 and the waiver process. There is a list of things that  
21 we've changed here. We've allowed a certification process  
22 for 4 percent applications where the application has  
23 changed but the changes do not have a material effect on  
24 original underwriting. We've clarified how staff may  
25 initiate withdrawal of a 4 percent application. We have

1 described how traditional carryforward applications will  
2 be treated as it relates to deconcentration and capture  
3 rate provisions. We describe how 4 percent and direct  
4 loan applications with outstanding deficiency items will  
5 be suspended from review.

6 Also included is the time frame by which  
7 outstanding items need to be resolved once the funding  
8 source becomes oversubscribed. We modified the  
9 ineligibility criteria associated with applicants and  
10 applications to include false certifications contained in  
11 the application. And we are requiring building and unit  
12 floor plans to be submitted on rehabilitation and adaptive  
13 reuse developments and that they indicate the accessible  
14 units. We've added language regarding the information  
15 that must be submitted and the case that must be made when  
16 requesting a waiver be granted by the Board.

17 In Subchapter G, this subchapter contains  
18 information regarding Department fees and other general  
19 requirements, including the appeals process, adherence to  
20 obligations, and alternative dispute resolution. We have  
21 changed this section by removing the administrative  
22 deficiency notice late fee to be consistent with revisions  
23 in other sections of the rule. And a provision that  
24 building inspection fees paid may be refunded if the  
25 development does not move forward, so if you've paid

1 inspection fees and you're not moving forward, we can  
2 refund.

3 Staff recommends that the proposed amendments  
4 of 10 TAC Chapter 10, Subchapter A, General information  
5 and definitions, Subchapter B, Site and development  
6 requirements and restrictions, Subchapter C, Application  
7 submission requirements, ineligibility criteria, board  
8 decisions and waiver of rules for applications, and  
9 Subchapter G, Fee schedule, appeals and other provisions,  
10 be approved for publication in the *Texas Register* for  
11 public comment.

12 MR. GOODWIN: Do I hear a motion?

13 MR. BRADEN: Move to approve.

14 MR. GOODWIN: Move to approve. Second?

15 MS. THOMASON: Second.

16 MR. GOODWIN: Questions for Marni? Public  
17 comment?

18 MR. VASQUEZ: Is this the public comment period  
19 or on 8(b)?

20 MR. GOODWIN: This is comment about 8(b).

21 MR. BOWLING: So I'm Bobby Bowling again, and  
22 I'm representing TAAHP. I'm speaking to the development  
23 accessibility requirements on page 20 of 21 on Subchapter  
24 B, Site and development requirements and restrictions.

25 And we have unanimous consent on this item that

1 we still object to unit types that are exempt from federal  
2 accessibility standards having that exemption removed in  
3 our rules. This is the first time we're doing this. The  
4 building type in section (8)(b) where it says regardless  
5 of building types, all units accessed by the ground floor  
6 or elevator, this is not what's in the Fair Housing Act,  
7 this is not what's in UFAS. There is a unit type and a  
8 building type that is exempt.

9           And like Marni stated to you, you are in this  
10 draft making that requirement more restrictive than the  
11 Federal Government's requirement for the State of Texas.  
12 And with deference to what she said, I have not seen -- I  
13 come to most of these Board meetings and I have not see  
14 this outcry from the disabled community who is saying that  
15 this is creating a burden or hardship or this is unfair or  
16 this is a problem. I have almost 3,000 units in El Paso  
17 County in the Tax Credit Program in 9 percent credit  
18 awards, we have a tremendously hard time filling up the  
19 units we have now that we've set aside for accessible at  
20 some point, they're the last units we rent.

21           I just don't, as a practitioner, see there's  
22 this outcry or this urgent need to make Texas's rules more  
23 stringent than the Federal Government's rules with regard  
24 to accessibility. I don't know why we just don't adopt  
25 federal accessibility requirements. And we voiced this

1 concern when the draft first came out, and not everything  
2 does TAAHP wholeheartedly agree upon because we have 324  
3 members of our association, and we're 100 percent  
4 unanimous on this one. I don't know of one practitioner  
5 that thinks this is a good idea or that there's a need for  
6 this.

7 MR. IRVINE: I would respectfully ask if TAAHP  
8 really understands what we're proposing. I agree that if  
9 a federal exemption for accessibility applies, that one  
10 would call into question why would you impose an  
11 accessibility requirement on it, and it's not an  
12 accessibility requirement, it's a visitability  
13 requirement. So if you were building an exempt unit, if  
14 you were building a multi-story unit --

15 MR. BOWLING: Townhome.

16 MR. IRVINE: -- a townhome, first of all, the  
17 route to the townhome would already be covered by existing  
18 laws and design manuals which have numerous exceptions for  
19 steeply graded lots and all those kinds of things, so  
20 we're talking about from the threshold in. And what we're  
21 basically talking about is a no-step entrance, which  
22 doesn't seem like a problem, having a bathroom on the  
23 ground floor. Wouldn't you typically build a bathroom on  
24 the ground floor of a townhome?

25 MR. BOWLING: Right.

1 MR. IRVINE: And heights for switches, and  
2 that's pretty much it, isn't it?

3 MS. HOLLOWAY: Yes.

4 MR. IRVINE: That's it.

5 MR. BOWLING: The route --

6 MR. IRVINE: The route is covered by something  
7 completely different. It relates to the design of your  
8 development and the requirements for external routes to be  
9 accessible in accordance with the design manual which  
10 provides for exemptions.

11 MS. HOLLOWAY: Which you're already doing, I'm  
12 sure.

13 MR. BOWLING: But you're removing the  
14 exemptions for grade.

15 MR. IRVINE: No.

16 MS. HOLLOWAY: May I?

17 MR. IRVINE: I don't think we're asking you to  
18 do anything that you would not already be doing.

19 MR. BOWLING: But we still struggle with  
20 understanding why we're changing language that is pretty  
21 clear in the federal standard that provides exemption for  
22 building type.

23 MR. IRVINE: I think that we have identified  
24 that you do not understand the Fair Housing Design Manual  
25 as relates to external routes, this exercise was worth its

1 weight in gold.

2 MR. BOWLING: Well, again, we hire  
3 professionals, we hire architects and engineers to make  
4 sure that our plans are compliant with Fair Housing.

5 MR. IRVINE: And they probably are.

6 MR. BOWLING: And so I can tell you with  
7 absolutely certainty, once it's permitted it has met those  
8 requirements. And I just see this as more restrictive,  
9 and when I compare the language in the federal law to this  
10 language, there's an exempt building type.

11 MR. IRVINE: Apples and oranges. I think we're  
12 actually giving you the opportunity to take credit for  
13 doing what you're already doing.

14 MS. STEPHENS: Lisa Stephens.

15 We build quite a bit of townhome product. The  
16 difference between what we're doing in the townhome  
17 product is that the half bath that's on the ground floor  
18 does not meet the accessible turning radiuses for  
19 visitability, it just doesn't, it doesn't have to, it's  
20 exempt. So under the new 2010 guidelines, a bathroom  
21 that's going to meet your accessibility requirements  
22 requires a five-foot turning radius. That means I can no  
23 longer build it under the stairwell.

24 Now, I'm going to caveat all of this with  
25 saying I haven't looked at the change in this to see if

1 that half bath has to be a fully accessible bath or if it  
2 can be the same half bath that we're building regardless  
3 if it is not an accessible bath, then I think you're  
4 correct, that half bath under the stairwell still works.

5 MR. GOODWIN: Marni.

6 MS. HOLLOWAY: We've had this conversation with  
7 a number of people. This change is coming about because  
8 our previous requirement was actually more than federal  
9 law regarding those exempt units and what it required was  
10 that 20 percent of those townhouses have a bedroom and  
11 bathroom on the first floor. That's every unit size,  
12 every unit type. It created I don't know how many issues.  
13 It's difficult to administer and the sense is that it  
14 wasn't getting us to something useful.

15 This is not about accessibility, this is not  
16 about making anything accessible that isn't required to be  
17 accessible already. This is about can my friend in a  
18 walker, and my sidewalk is already flat --

19 MR. IRVINE: Or exempt.

20 MS. HOLLOWAY: Or exempt. But can my friend  
21 with a walker get through my front door, comfortably use  
22 the bathroom, comfortably come visit me. It's not about  
23 turning radiuses, it's about the bare minimums that are in  
24 the Fair Housing Design Manual. Turning radiuses are  
25 about accessibility. So the Fair Housing Design Manual

1 includes 20 pages of exemptions just for difficult to  
2 develop sites. What we are doing is saying the ground  
3 floor of your townhouse, if you can get there on an  
4 accessible route per the Fair Housing Design Manual, has  
5 to be one that someone can get into with a walker or small  
6 wheelchair. That's what we're looking for.

7 MR. GOODWIN: Other comments? Questions from  
8 Board members?

9 (No response.)

10 MR. GOODWIN: Did you have a comment?

11 MS. ANDERSON: Yes, sir. Good afternoon.

12 Terri Anderson, Anderson Development and Construction.

13 I would respectfully maybe request that staff  
14 discuss with architects just to make sure that there are  
15 no additional requirements and criteria and maybe report  
16 back before the rules become final, even though they're  
17 going out for a draft.

18 Thank you, sir.

19 MR. GOODWIN: Additional comments?

20 MR. ECCLES: And of course, this is perfect  
21 fodder as well for public comment. Bring forward that  
22 here's the law, here's this rule, that's good stuff for  
23 public comment.

24 MS. ANDERSON: Thank you.

25 MR. SCHMIDTBERGER: Russ Michael Schmidtberger,

1 real estate attorney in Houston and Austin.

2 This is also under Subchapter B, it kind of  
3 takes us in a different direction. I commented a little  
4 bit on it yesterday, it has to do with undesirable site  
5 features, specifically the radius distances or the  
6 distances between undesirable site features and how it  
7 might affect development down in areas that are close to  
8 refineries, specifically those that have been hit because  
9 of Hurricane Harvey.

10 From Corpus Christi all the way up to Beaumont,  
11 everybody knows -- I don't know if you guys have been  
12 there or not, I know I've driven quite a bit of Houston  
13 myself, because I went to law school there, I've got a ton  
14 of family and friends down there too -- a lot of these  
15 places that were hit are in areas that refineries were at,  
16 things of that nature, from Beaumont, Port Arthur, through  
17 Deer Park, down to LaPorte, League City, Texas City, all  
18 the way down to Corpus.

19 Right now inside undesirable site features we  
20 have distances from certain things that we don't want to  
21 be close to, for example, 300 feet of junkyards, 300 feet  
22 of solid waste sanitary landfills, 300 feet of sexually  
23 oriented business, 100 feet of the nearest power line  
24 structure, 500 feet from active railroads, 500 feet from  
25 heavy industry, but for some reason, refineries are carved

1 out to be two miles at this point, and I think at this  
2 point without doing too much changing, we could  
3 potentially change that two miles down to maybe 1,000 feet  
4 or a half mile today and send the right message to the  
5 places that are actually affected by the hurricane.

6 And so that's what I would suggest that we do  
7 today is that we take out the two miles and that we  
8 replace it with either 1,000 feet or perhaps half a mile.

9 It has been that way in the past, I'm not sure how many  
10 years it's been two miles, but I know it hasn't been that  
11 long. For some reason the policy around making it two  
12 miles extended it and I'm not really sure why. I've  
13 worked with personal injury attorneys down in League City  
14 and Texas City and Friendswood, and I understand that  
15 Texas City might blow up every ten years and there might  
16 be a benzene plume that reaches 1,000 feet or something  
17 along those lines, but two miles seems pretty big,  
18 especially the way it's affecting Hurricane Harvey now.

19 So if you guys could take issue with that or  
20 maybe explain a little bit about why the policy is at two  
21 miles and why we can't narrow it, at least as the TDHCA  
22 Board and staff, I think it sends the right message to the  
23 cities that they don't have to pass a resolution or an  
24 ordinance to actually narrow it themselves, which is also  
25 included in this. It allows us to come to them first and

1 say we believe that we can narrow it first for you, and  
2 then if you want to narrow it from there, you can do that.

3 Thank you. I can take any questions too, if  
4 you have any.

5 MR. GOODWIN: Any questions?

6 (No response.)

7 MR. GOODWIN: Thank you.

8 Any additional comments?

9 (No response.)

10 MR. GOODWIN: Any Board members want to strike  
11 anything from these rules before they're put in the  
12 *Register*?

13 (No response.)

14 MR. GOODWIN: We have a motion and a second.

15 All in favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: It passes.

20 Thank you, Marni.

21 MS. HOLLOWAY: I believe we have some public  
22 comment.

23 MR. GOODWIN: We are at that stage where we  
24 take public comment for developing agenda items in the  
25 future. I would remind everyone that we cannot get into a

1 debate here but we'll be glad to listen to your comments.

2 MR. BOWLING: Good afternoon, Mr. Chairman and  
3 members of the Board. I'm Bobby Bowling, I'm representing  
4 TAAHP.

5 I have a few comments that might take a little  
6 more than three minutes.

7 MR. GOODWIN: Three minutes.

8 MR. BOWLING: I'll do the best I can, Mr.  
9 Chair, but I might ask for your deference to give me  
10 another minute or so.

11 So again, I'm speaking for TAAHP. We have over  
12 300 members, we represent most of the tax credit industry  
13 in the State of Texas. I'm going to ask you for two  
14 things to be placed on agenda items for further  
15 consideration.

16 One is to take -- and I don't know if this is  
17 an agenda item actually, but we want to plead with you all  
18 to do everything you can, in light of Hurricane Harvey, to  
19 ask the Federal Government to please provide proper  
20 relief, including additional tax credits for our state.  
21 It's what we've gotten in past disasters with Hurricane  
22 Ike and Hurricane Katrina, we got a sizable addition to  
23 our tax credit pool. And we just want to reach out to all  
24 of you and any stroke that you have with the Governor's  
25 Office and any representatives, any Congress people and

1 for TDHCA staff to please do everything within your power  
2 to ask the Federal Government to send more tax credits our  
3 way.

4 The next thing that I wanted you to consider  
5 placing on a future agenda item is to consider the effects  
6 of the price increases and supply delays and labor  
7 shortages that we're going to be facing really on the  
8 awards that you just made for the 2017 year. In the  
9 past -- and I did some research, I've been in this program  
10 since our first awards were in 2001, and like I said  
11 earlier in my testimony, in 2004, 2005 and 2006 deals, you  
12 took money from '07, '08 and '09 pools up to 10 percent if  
13 the developer could demonstrate the cost increases to  
14 supplement and make sure that those deals got placed in  
15 service in time.

16 And I just want to implore upon you all -- I  
17 gave you my testimony earlier that I've already heard from  
18 my concrete supplier that we're getting a \$30 per yard  
19 increase, really no explanation, but I know it's because  
20 of the rebuilding efforts that he sees coming and he's  
21 going to try to sell his product of have a shortage for  
22 demand in Houston and the Gulf areas. This is going to be  
23 a real problem, and you're going to have a situation where  
24 you're going to be faced with providing additional credits  
25 to see that some of these deals get constructed, or these

1 deals are going to get turned back.

2           And you might say, well, so what if these deals  
3 will get turned back, the money will go into the next  
4 pool, but you're going to lose a year on that, so if a  
5 2017 deal gets put back into the pool you can re-award it  
6 in 2018 but you've lost a year on that deal. And I don't  
7 really think that that necessarily is a forward  
8 commitment, so I'm asking that you put this on the agenda  
9 to consider.

10           And then the last thing that I wanted to ask  
11 you about is I don't know if there's some kind of blanket  
12 motion that you could all take to declare that a force  
13 majeure event has taken place with this storm but it's the  
14 biggest rainfall event, from what I read, in the history  
15 of the contiguous United States. So I think you're going  
16 to have some deadline and some placed in service issues.  
17 You have the ability in Section 42 from the Federal  
18 Government to extend placed in service up to a year if a  
19 force majeure event has occurred. Definitely along the  
20 coast you're going to be seeing requests from our members,  
21 but I think it's going to affect our entire state.

22           So my ask, in wrapping up, is that you place an  
23 agenda item to consider this in October. Thank you.

24           MR. BROWN: I'm Jed Brown, Brownstone  
25 Affordable Housing.

1 I'm glad we're talking about the 2018 QAP.  
2 Some of us are still hung up on 2017. The QAP and the  
3 rule are what we as developers and applicants are required  
4 to work under and we do so, but it's a two-way street.  
5 The rules must be administered by staff according to how  
6 they're laid out.

7 We need to bring up an issue today that  
8 occurred with the tax credit collapse at the July 27 Board  
9 meeting. The collapse did not follow the award  
10 recommendation methodology outlined in 11.63 of the QAP.  
11 Step 5 of the methodology states that any remaining credit  
12 after rural collapse will be used to award the highest  
13 scoring application not selected in a prior step in the  
14 most underserved subregion in the state compared to the  
15 amount originally made available in each subregion.

16 On July 27, the tax credit ceiling accounting  
17 summary showed that Region 11 Urban was the third most  
18 underserved subregion in the state at 17.39 percent. This  
19 did not include Baxter Lofts, as it should have. With  
20 Baxter Lofts, Region 11 Urban would have been 11.23  
21 underfunded on the day of the awards. Despite being more  
22 underfunded, Region 11 Urban was bypassed in the collapse  
23 and their credits were instead awarded to the fourth most  
24 underfunded region which would be Urban 2 which was 11.05  
25 percent underfunded.

1           Since the July 27 Board meeting, the two  
2 recommended applications which were still under review by  
3 staff have lost tiebreaker points and are no longer  
4 competitive. While this affects its underfunded  
5 percentage, Region 11's position in the statewide  
6 collapse, more underserved than Region Urban 1. Region 11  
7 Urban is now 15.39 percent underfunded and did not receive  
8 an allocation in the statewide collapse. Region 2 is  
9 11.05 percent underfunded and did receive an allocation in  
10 the collapse.

11           This, unfortunately, creates a math problem as  
12 the statewide collapse is approximately \$240,000 short,  
13 making both 11 Urban and 2 Urban whole. Being that our  
14 application is the next on the wait list in Region 11  
15 Urban, we request that the Board ask staff to work with us  
16 to find a proper solution to the situation.

17           I've been involved in the Tax Credit Program  
18 for the last ten years, our firm has participated as a  
19 developer and general contractor on 30 different tax  
20 credit applications, approximately, across Texas. This is  
21 the second time in ten years you've seen me come before  
22 the Board, so this is a big deal to us. We believe we  
23 earned an allocation of credits and we'd like to receive  
24 it.

25           Thank you very much. Have a good day.

1 MR. GOODWIN: Thank you.

2 MR. PADILLA: Arnold Padilla, McAllen Housing  
3 Authority.

4 Jed just came up here to give you the  
5 unfortunate situation of what occurred this past July 27.

6 McAllen Housing Authority is the application that we're  
7 talking about that should be getting funding.

8 Unfortunately, errors occur, we're not here to blame  
9 anybody other than when errors occur what we normally do  
10 is we go back and fix the error, we take care of things  
11 correctly. And what I'm up here to do is to ask you to  
12 please put on the next agenda an item -- unless we're able  
13 to fix it before the October 12 meeting -- is put an item  
14 on the agenda to take care of this award correctly, as the  
15 QAP states it should be done as the rules apply, and as  
16 McAllen Housing Authority's application has been done  
17 correctly, and is the next application that should be  
18 awarded. Without you going back to correct the issue, you  
19 are at a \$240,000 shortage of funds to be able to fund our  
20 application.

21 And I will tell you ours already has the  
22 zoning, something that everybody keeps talking about.  
23 Zoning is a problem and I bring it up from the previous  
24 matter about how to give incentive points. Zoning is not  
25 going to resolve your issue, unfortunately. I think

1 there's too many variables that play a role as to why  
2 people don't get started on time. For example, why I'm up  
3 here today, here we are at the end of September, we still  
4 can't get an award, it may be October before we get our  
5 award, by the time we get our commitment it may be the end  
6 of the year. There are too many facets that affect the  
7 entire process of how and when people actually get to  
8 construction.

9 But in our case what we'd like to do is let's  
10 go back and correct unfortunately what has occurred, let's  
11 award the credits properly to McAllen Housing Authority's  
12 application, Las Palomas, as we should. We are, again,  
13 already zoned. We'll do everything we can to expedite the  
14 process and get our construction started on time.

15 Thank you very much.

16 MR. GOODWIN: Thank you.

17 MS. STEPHENS: I'm Lisa Stephens and I'm  
18 actually speaking on behalf of the Texas Coalition of  
19 Affordable Developers. We were glad to work with TAAHP  
20 this year on the proposals that Bobby actually brought to  
21 you a few minutes ago.

22 I want to point out that the extensions on  
23 placed in service deadlines may actually be consideration  
24 for areas outside of the impacted counties because on  
25 sites that are under construction currently that may have

1 12/31/17 placed in service deadlines and those that are  
2 trying to get underway, we're seeing issues with getting  
3 both materials and labor on those jobs right now. It's  
4 going to have a direct impact on particularly the next  
5 30-60-90 days as we're looking for materials that may have  
6 been flooded out in warehouses and/or labor, businesses  
7 that are flooded out that they need some time to get back  
8 before they can show back up on the job.

9           So I'd like for you to take that into  
10 consideration under the force majeure provisions. It may  
11 be outside of the impacted counties, it may affect both  
12 '15 and '16 allocations that are under construction  
13 currently that are going to see issues as a result of  
14 Harvey.

15           And then secondarily, TexCAD unanimously also  
16 supported the request for some allocation from future year  
17 cycle, perhaps 10 percent out of 2018, to be set aside if  
18 there is in fact cost increases on the 2017 awards.  
19 Certainly getting those units on the ground sooner rather  
20 than later, I think, is preferred by everyone, in  
21 particular given the amount of disaster we've had  
22 recently.

23           So thank you for your consideration of those.

24           MR. GOODWIN: Thank you.

25           Any additional public comment?

1 (No response.)

2 MR. GOODWIN: Staff, anybody on staff have  
3 anything they want to say? Any Board members?

4 (No response.)

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

7 MS. BINGHAM ESCAREÑO: So moved.

8 MR. GOODWIN: Moved. Seconded?

9 MR. BRADEN: Second.

10 MR. GOODWIN: All in favor?

11 (A chorus of ayes.)

12 MR. GOODWIN: We're adjourned.

13 (Whereupon, at 2:45 p.m., the meeting was  
14 adjourned.)

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C E R T I F I C A T E

MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: September 7, 2017

I do hereby certify that the foregoing pages, numbers 1 through 217, 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.

9/14/2017  
\_\_\_\_\_  
(Transcriber) (Date)

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