

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

RULES COMMITTEE MEETING

Texas State Capitol
Capitol Extension
Room E1.010
1100 Congress Avenue
Austin, Texas

September 5, 2018
12:36 p.m.

MEMBERS:

LEO VASQUEZ, III, Committee Chairman
PAUL A. BRADEN, Member
LESLIE BINGHAM ESCAREÑO, Member

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P R O C E E D I N G S

1
2 MR. VASQUEZ: I'd like to call the meeting to
3 order. I wonder where my gavel is; I'm sure I'm going to
4 be needing it later on this afternoon.

5 (General laughter.)

6 MR. VASQUEZ: So I'd like to call the Rules
7 Committee meeting to order of the Texas Department of
8 Housing and Community Affairs. I note that myself, Leo
9 Vasquez; and Board Member Paul Braden are here; Ms.
10 Leslie is not here yet, although not sure, but we're
11 going to get on because we know we have a full agenda and
12 y'all are anxious to get going on this.

13 Just as heads up warning, on my drive over here
14 I was listening to the Kavanaugh hearings and so I am
15 prepared to ask some real probing questions today, so
16 you'd better be ready.

17 (General laughter.)

18 MR. VASQUEZ: So we do have a quorum, and the
19 first item on the agenda is Ms. Marni Holloway,
20 discussing presentation and possible action to make
21 recommendations to the Governing Board on the 2019
22 Qualified Allocation Plan.

23 MS. HOLLOWAY: Good afternoon, Mr. Vasquez, Mr.
24 Braden.

25 So in order to better meet the statutory

1 requirement of the QAP to provide information regarding
2 the administration of an eligibility for the 9 percent
3 program, we've merged most of Chapter 10, which is the
4 Uniform Multifamily Rules, into Chapter 11, which is the
5 QAP, so the QAP is much, much longer than it has been in
6 the past. Asset management and compliance sections will
7 remain in Chapter 10. Chapter 12, which is our
8 Multifamily Bond Rule, and Chapter 13, our Direct Loan
9 Rule, will now reference the QAP for threshold criteria
10 where they had referenced Chapter 10 previously.

11 The resulting QAP now has multiple subchapters
12 which roughly correspond to the Chapter 10 subchapters
13 just to try to make it easier, we've tried to keep the
14 numbering as consistent as possible, those kinds of
15 things. The only place that we've combined is in
16 Subchapter A which is now both definitions and the QAP
17 itself, and that's been renamed Pre-application,
18 Definitions, Threshold Requirements and Competitive
19 Scoring.

20 I would suggest that as we are working through
21 this we sort of pause from time to time to give folks an
22 opportunity to come up and speak about whatever item it
23 is that I've just discussed.

24 MR. VASQUEZ: Right, and I agree. And just so
25 everyone here knows how we plan to proceed, Marni will

1 present the section and then we'll take comments on that
2 section from interested parties. So don't worry, we're
3 not going to blow by everything so we'll give you a
4 chance to make your comments and suggestions and then
5 we'll move on to the next subject matter. Try not to
6 skip ahead. If there's items that we're going to talk
7 about later, it's okay to come up here multiple times
8 separately for each section, just try to limit the
9 comments to the section that Marni has just presented as
10 we go.

11 If your comments are substantially identical to
12 a previous speaker, in the interest of time, if you feel
13 compelled to come up and speak on it, please just
14 indicate "I echo the comments of so-and-so, thank you"
15 and sit down, please.

16 And I guess from there, let's go on with the
17 first section.

18 MS. HOLLOWAY: Okay. So in that first section
19 we've made several changes to definitions. We've
20 modified the adaptive reuse definition to allow for a
21 broader range of developments; we've added a definition
22 of common area; we've simplified the definition of
23 elderly development to remove the limitation and
24 preference sub-categories; we've expanded the definition
25 of material deficiency to provide clarity regarding the

1 application faults that could lead to loss of points or
2 termination; we've added a definition of preservation to
3 frame our preservation work required by statute. And
4 that would be the definition section.

5 And, Cynthia, did you want to speak to
6 definitions?

7 MS. BAST: I do have some issues with
8 definitions. Thank you.

9 MR. VASQUEZ: And as a reminder, speakers, when
10 you come up to the podium, introduce yourself, identify
11 yourself and who you represent, if anyone in particular,
12 and please sign in at the podium.

13 Cynthia.

14 MS. BAST: Thank you. Good afternoon. We
15 really appreciate the opportunity to bring topics to the
16 Rules Committee. I'm Cynthia Bast, I am with Locke Lord,
17 and I am not representing any particular client in my
18 testimony.

19 MR. VASQUEZ: So who are billing? All of them.
20 Right?

21 MS. BAST: For the good of the order.

22 MR. ECCLES: Don't answer that.

23 (General laughter.)

24 MS. BAST: Thank you, Counsel.

25 One of the things that I would like to talk a

1 little bit about is a problem that we have bumped into
2 from time to time in a variety of contexts across the
3 rules, and it has to do with the issue of control and
4 then how that plays out in the ownership of a property,
5 how that plays out in previous participation review, how
6 that ultimately plays out in ownership transfer
7 applications, because it's all tied together. At the end
8 of the day, this Department is interested in knowing that
9 it's doing business with people who are going to be good
10 operators in their program, and that's what you want to
11 investigate.

12 For instance, one of the problems that we have
13 is that we often have joint ventures between, say, a for-
14 profit developer and a historically underutilized
15 business, where that HUB has certain rights to approve
16 but would not really be said to have control, and we have
17 found that in those instances sometimes the previous
18 participation of that property is attributed to the HUB,
19 even though they can't control it, and it creates issues
20 down the line when you're going through the asset
21 management side.

22 And so one of the things I have noticed is that
23 we have language in Section 11.1(d)(30) which is the
24 definition of control, Section 11.1(d)(97) which is the
25 definition of principal, Section 11.204(2) which has to

1 do with applicant eligibility, and Section 11.204(13)
2 which deals with the organizational structure. All of
3 them address control just a little bit differently. They
4 talk about if you have a limited liability company then
5 these are the parties who have control or these are the
6 parties who are principals, and when that language is a
7 little bit different, I think it causes confusion in our
8 applicant community and I think our applicant community
9 would like to streamline this.

10 So I have some recommendations where in our
11 definition -- well, we basically keep this concept in one
12 of these sections and that would be in Section 11.204(2),
13 which I think lays it out really well, and we take it out
14 of the definition of control, the definition of
15 principal, so that they all cross-reference and they all
16 cross-reference to the same thing.

17 I also think it's important -- and I know this
18 has been around a long time and I know I've said this
19 before, but someone who owns 10 percent of an entity just
20 by owning 10 percent of an entity does not have control,
21 you don't, you simply do not. Now, if you own 10 percent
22 and you're also a president or maybe you have a voting
23 bloc, you have control, but if you have 10 percent, you
24 don't have control. And so I'd also like to see that up
25 to 50 percent because that is the common definition of

1 controlling an entity.

2 MR. VASQUEZ: So how would you treat an
3 managing partner?

4 MS. BAST: A managing partner is absolutely in
5 control, and that's defined in here. So we define these
6 different roles, and we say if you're a general partner
7 you have control, if you're a managing member you have
8 control, if you're a president or an executive officer
9 you have control, but then we go on to say if you own 10
10 percent you have control. And I simply disagree with
11 that from a legal standpoint that a 10 percent owner can
12 have control absent other attributes.

13 So one of the things that I think is a
14 challenge about this meeting and about the posting is
15 that we as a community often don't know what kind of
16 recommendations we can make during the public comment
17 process because it's non-substantive and what kind of
18 things have to get into the rule right now before we
19 approve it for publication. So if the Department is
20 interested in looking at some recommendations on this
21 topic, I have some written up that I am happy to share so
22 that we can hopefully streamline this a little bit.

23 And that is my comment. I appreciate the
24 opportunity.

25 MR. VASQUEZ: Thanks. And obviously, I think

1 we should share these comments with staff. I would think
2 that under the definitions section is where we should
3 have this clearly defined and not conflicting potentially
4 in other sections.

5 Would we give this to our counsel, or give this
6 to Marni, or give this to our esteemed executive
7 director?

8 MR. IRVINE: Good afternoon. Tim Irvine,
9 executive director.

10 I actually, a little bit before the meeting,
11 had the opportunity to look at Cynthia's draft changes,
12 and I think that they line up with my thinking on the
13 matter. To me, control is the present legal ability to
14 make things happen, to compel that the organization will
15 run itself in some particular way. Obviously, if you own
16 50 percent of the stock, you've got the ability to take
17 shareholder level action that creates new management and
18 it all dominoes into the possibility of a change, so I
19 agree that that is a control threshold.

20 I think that my reading of her draft changes,
21 it would streamline and smooth this process, and if it's
22 the committee's will, we'd be glad to work to incorporate
23 those changes into the draft that gets published in the
24 *Register*.

25 MR. VASQUEZ: Okay. And actually, let me take

1 this opportunity -- and perhaps Mr. Irvine or Mr. Eccles
2 can help emphasize this more clearly -- this year's
3 rulemaking is not an amendment to prior rules, this is a
4 full replacement, I guess technically a repeal and
5 replacement of the prior rules, so if there's anything
6 that y'all want in it, we have to put it in now for
7 comment. So at this point it's better to err on the side
8 of putting more out and then we weed out things that
9 there's public outcry saying, no, we don't want this, or
10 it needs to be edited a certain way. So again, this year
11 it's a little bit different than the last couple of
12 cycles, it's a full replacement of the prior rules, so if
13 you want something in, if there's a topic that you feel
14 needs to be addressed, now is the time to put it in.

15 MR. IRVINE: And I would also amplify that
16 under the Administrative Procedures Act that one of the
17 real tests on changing what's published for public
18 comment is whether you are injecting new concepts. I
19 think right here it's clear that the concept of control
20 is something that's out there for public comment. It can
21 be refined in the public comment reasoned response
22 process, but I think that having the concept of control
23 written as clearly as we possibly can is always to our
24 advantage.

25 MR. VASQUEZ: And another procedural question,

1 Beau, on each of these if we are directing staff to take
2 the input from the constituent and work on revising the
3 language to incorporate a single definition, an all-
4 encompassing definition of control, at this point would
5 we be making motions to present that to the full Board,
6 or direct staff, or do we just simply direct staff to
7 please do that.

8 MR. ECCLES: I think you can actually just
9 direct staff at this point. And again, where we are in
10 the process is we are before the proposed rule goes to
11 the full Board, and then after it clears the full Board
12 then it is published, then we are in the public comment
13 period, and then things become a little bit more
14 difficult to make big changes to. Once the rule is
15 published in the *Register*, if an agency changes the rule
16 in nature or scope in response to public comment, if it
17 changes in nature and scope so much that it would be
18 deemed a different rule or if it affects individuals who
19 would not have been impacted by the rule or if it imposes
20 a more strict set of requirements for compliance on a
21 group of folks than it would have, then it would require
22 that the rule be actually re-published.

23 That said, we are before that period, this is
24 not public comment, this is what we call stakeholder
25 input, so this is the time to inject concepts before it

1 goes to the Board and the Board takes it. Now, the
2 process here is you have you guys, the Rules Committee,
3 who are hearing these things and you can either direct
4 staff to incorporate that into what is going to be
5 proposed to the full Board tomorrow as part of this
6 committee's recommendations, or you can say we don't
7 recommend that that be incorporated into the staff draft,
8 the proposed draft as is going before the Board tomorrow.

9 And if you say this committee doesn't seem to
10 have any sort of recommendations that it be incorporated
11 into what the Board will consider tomorrow, those who are
12 out here can still come before the Board tomorrow and say
13 we think it should be in there. They're essentially at
14 the same place tomorrow, pre-adoption of the draft, as we
15 are today.

16 MR. BRADEN: So I agree with your comments that
17 what Cynthia brought up makes sense. I also agree that
18 it makes sense that it be put in the definitions section.
19 Even if the substantive language is in 11.204, it would
20 make more sense to me to put it in the definitions
21 section. Let's define the terms right and then use them
22 consistently throughout the document, at least that's the
23 ideal. So I'm okay with directing staff to pursue that
24 matter.

25 MR. VASQUEZ: So again, on this one if staff

1 could take a look at Ms. Bast's definitions
2 recommendation, and then also work with consolidating
3 wherever there's other definitions of control, just
4 reference back to the original.

5 MS. HOLLOWAY: And Ms. Bast sent us late
6 yesterday sort of an outline and markup of the various
7 rules. I think probably the best way to handle this in
8 order so it's very clear for the full Board tomorrow is
9 to incorporate those changes and just bring those pages
10 with a bunch of copies, with enough for everyone.

11 MR. ECCLES: With enough for everyone. It is a
12 bunch of changes, and I think probably speaking through
13 it would be cumbersome.

14 MS. HOLLOWAY: I think it's easier to follow on
15 paper. Okay. We can do that.

16 Is that acceptable?

17 MR. BRADEN: You'll be able to do that before
18 the meeting?

19 MR. ECCLES: All depends on when this one gets
20 done.

21 (General laughter.)

22 MS. HOLLOWAY: Okay. So moving on, under the
23 staff determinations, request for staff determinations,
24 we've broadened the topics that can be addressed through
25 a staff determination. Of course, we've updated the

1 calendars for the 9 percent cycle and moved the deadlines
2 that were previously in Subchapter G, I believe, into the
3 QAP, so all of those dates for all of our programs and
4 fund sources are all in the same place.

5 We've clarified the additional phase rule and
6 added a restriction on the developer fee for the
7 additional phase so that developers aren't able to build
8 two phases of less than 50 units and gain the larger fee
9 on both.

10 For proximity of development sites we've added
11 a requirement that sites be separated by at least 1,000
12 feet, and that the area in between was not created as a
13 means to meet the separation requirement. Additionally,
14 sites may not have been under common ownership at any
15 time in the preceding two years. So this item addresses
16 the issue that came up in the 2018 9 percent round
17 regarding the sites with the 10 percent landscape strip
18 between them.

19 MR. VASQUEZ: Ten foot landscape strip.

20 MS. HOLLOWAY: Ten foot, yes. It even says 10
21 foot and I said 10 percent.

22 MR. VASQUEZ: Again, Marni will take pauses.
23 Raise your hand if you want to come up, let us know; if
24 not, we're going to keep on rolling along.

25 MS. HOLLOWAY: We've added sites in qualified

1 opportunity zones to the list of those eligible for basis
2 boost. A qualified opportunity zone is a new concept
3 created out of the spending bill that also gave us the
4 additional 12.5 percent of credits this year. We don't
5 know yet how that will work with housing but this at
6 least gets it in there.

7 We've increased the minimum amount available to
8 each subregion under the Regional Allocation Formula to
9 600,000, that's from 500,000. And we've clarified the
10 statewide collapse rule to prevent the misunderstanding
11 that happened at the end of the 2018 round regarding the
12 elderly cap.

13 MR. VASQUEZ: Marni, as we're going along,
14 could you at least call out the section number?

15 MS. HOLLOWAY: Certainly.

16 MS. FINE: Hi. Tracey Fine with National
17 Church Residences.

18 I really do appreciate all the changes that
19 were incorporated and the opportunity to discuss this
20 before things get more set.

21 To my interpretation of the statute which
22 specifically says that the Board may not allocate more
23 than a maximum percent of credits available for elderly
24 developments unless there are no other qualified
25 applications in the subregion, under the statewide

1 collapse it highlights which subregion is available to
2 receive that next award. So it's not talking about
3 subregion compared to subregion, it will highlight which
4 one was underserved and underfunded. And in the case
5 like what happened this past round, I disagreed on how
6 that was determined. There is no legislation that would
7 prevent an elderly development to get awarded based on
8 the definition and the Administrative Code.

9 MR. VASQUEZ: So the new language you're saying
10 just does not address that sufficiently?

11 MS. FINE: I believe the new language is in
12 conflict with the statute.

13 MR. VASQUEZ: Do you have any suggestions?

14 MS. FINE: I don't think the elderly cap should
15 apply to that statewide collapse.

16 MR. VASQUEZ: I'm sorry, I've got to look to
17 counsel on that.

18 MR. IRVINE: Tim Irvine again. I believe that
19 the language is in complete conformity with the
20 requirements of the statute. I believe it was the staff
21 recommendation and an interpretation of the statute that
22 the Board followed at the administration of this issue in
23 the most recently concluded round, that taking funds from
24 other subregions via the collapse to augment this small
25 amount that remained within the underfunded region would

1 violate the statute by enabling it to do more elderly
2 deals in that subregion.

3 I believe that the way the statute is written
4 the plain meaning to me is if there is still room in what
5 was allocated to that subregion and there's nothing left
6 but another elderly deal, then it can be done and it can
7 exceed the cap. But I do not believe that the statute
8 provides for bringing funds in from other regions via the
9 collapse to allow you to exceed the elderly cap.

10 MR. VASQUEZ: Any other comments so far?

11 (No response.)

12 MR. VASQUEZ: Marni.

13 MS. HOLLOWAY: Okay. 11.7, tiebreaker factors.

14 So we've eliminated most of the tiebreakers that we used
15 in 2018 and replaced them with a new item that looks for
16 developments proposed in census tracts with poverty rates
17 below the median of all census tracts from submitted pre-
18 applications. Once that universe is established, we will
19 look for the census tracts with the highest rent burden.

20 If a tie still remains, the second tiebreaker is the
21 furthest distance from any other development awarded in
22 the past 15 years serving the same population. For
23 proposed developments in census tracts above the median,
24 the only tiebreaker will be distance.

25 MS. MEYER: Robbye Meyer.

1 One thing that TAAHP requested that as
2 tiebreakers we not use any other additional scoring items
3 that were previously used, and I agree with that, and the
4 first tie-break is using poverty as the first level, and
5 we use poverty in the opportunity index, so I would
6 request that poverty be taken out of that. The high rent
7 burden is a level if you want to use that, but poverty is
8 already being used in the opportunity index and now we're
9 using it in the first tie-break, and then in the second
10 level we're using high rent burden.

11 Rent burden has extensive mapping programs.
12 It's not going to disperse the housing. We're going to
13 use overlays and we're going to take underserved areas
14 and all the location, poverty rates and high rent burdens
15 and we're all going to end up in the same space, so it's
16 not going to disperse the housing, it's going to all end
17 up in the same census tract because you're going to
18 target the lowest poverty rate and the highest rent
19 burden in an underserved area, and we're all going to end
20 up in the same place. So it's not going to disperse
21 housing, it's just going to put us all on top of each
22 other again.

23 So I ask that if you're going to keep it that
24 way, then you just swap the two tie-breaks and put
25 distance first and then that will disperse the housing

1 first, and then if you get to the other tie-break, but
2 the distance will disperse the housing better.

3 MR. VASQUEZ: Okay. Thanks.

4 And actually, I have a question to staff. I
5 know previously we had issues with basically everyone
6 making all the tiebreaking points, or the first four or
7 seven, or everyone gets them. Right?

8 MS. HOLLOWAY: Yes.

9 MR. VASQUEZ: Is this going to help the way we
10 have it?

11 MS. HOLLOWAY: Well, it does a couple of
12 things. One thing is that it doesn't really inject
13 uncertainty because everybody will know at pre-app what
14 that median number is, but it's not like saying below 20
15 percent or everybody below 40 percent, or whatever that
16 magic number is, it's based on the submitted
17 applications. Yes, we do use poverty as part of the
18 threshold measures to get into the opportunity index and
19 there is some scoring involved there but it's a different
20 measurement, it's not below the median, across all the
21 pre-apps it's that 20 percent number.

22 MR. BRADEN: Have you received any input or
23 questions with respect to what the speaker just spoke
24 about?

25 MS. HOLLOWAY: I don't know if we have. I have

1 not heard that comment; I had to check with my comment
2 gatherer.

3 MR. BRADEN: And I had another question on the
4 tiebreaker language, the distance tiebreaker, and it says
5 proposed to be located farthest from an existing tax
6 credit assisted development that serves the same target
7 population -- which I get that -- and that was not
8 awarded less than 15 years ago. Does that mean that was
9 awarded more than 15 years ago? It's double negatives.

10 MS. HOLLOWAY: Let me double check. So the one
11 that I'm looking at says that was awarded.

12 MR. BRADEN: I'm looking at page 4 of 15.

13 MR. VASQUEZ: That serves the same target
14 population that was awarded less than 15 years ago. So
15 if it's awarded in the last 15 years, you measure against
16 it; if it's over 15 years, it doesn't count.

17 MR. BRADEN: So one here says was not, so I'm
18 confused by that. That must have just been the summary
19 material.

20 (General discussion regarding pages in
21 document.)

22 MS. HOLLOWAY: Correct. The language in the
23 draft rule says: Serves the same target population and
24 that was awarded less than 15 years ago.

25 MR. BRADEN: Okay. That works.

1 MS. HOLLOWAY: Any other comments?

2 MS. BURCHETT: Hello. My name is Sallie
3 Burchett with Structure Development.

4 And I just wanted to clarify, Marni, I think I
5 might be looking at an old draft, mine says the median
6 poverty rate gathered from applications.

7 MS. HOLLOWAY: We changed that. We changed
8 that as a result of comments.

9 MS. BURCHETT: Okay.

10 MR. VASQUEZ: Thanks.

11 MR. COMBS: Ryan Combs with Palladium USA.

12 The nuance there, Marni, I'm not sure if I
13 understood that. My understanding was that the way the
14 tiebreaker reads is that at pre-app you take the median
15 poverty rate, right, and then anything underneath that
16 median passes the first half of that tiebreaker.

17 My concern is that once we go into pre-app
18 we're locked in, so everybody who is submitting
19 applications in January, we work on sites, we make
20 representations to land sellers, we make representations
21 to cities, and this is a very difficult process, and I
22 think that would be a time for it to be difficult because
23 I think the barrier to entry should be high. However,
24 the challenge is when we go in and we submit a pre-app
25 and we have absolutely no idea if it's going to be

1 competitive in that first tiebreaker or not until after
2 the pre-applications are in, we're locked, and at that
3 point it functionally becomes just a lottery. We've
4 submitted sites that we have no idea how competitive they
5 are or not.

6 I like the idea of moving distance up, that's
7 something that disperses housing, as well as it's
8 something that's relatively -- I can look at a site and
9 say, you know, this site is relatively far from an
10 existing housing tax credit community. That's something
11 that I can look at and make a reasonable assumption on.
12 Or if that's not the case, then amending the first
13 tiebreaker in some way that we can look at a site and
14 say, you know, this is good real estate, we're willing to
15 go and really go get shovel ready on a development. You
16 know, we're all chasing good real estate and that's what
17 we want to find is something that is reasonably
18 understandable that we can get there, so whether it's
19 lowest poverty rate, distance, something that is
20 reasonably predictable.

21 MR. REED: Hello. Good afternoon. Cyrus Reed
22 here with Sierra Club Lone Star Chapter. For the record,
23 I've never built anything in my life -- well, other than
24 like little structures behind the house which fall down.
25 But I am an advocate for energy efficiency and green

1 building, and so I have two comments related in general
2 to the rules, so I wasn't quite sure where to comment.

3 One was unlike in your rules for houses where
4 you have specific reference to the state energy code, the
5 minimum state energy code, I don't see a reference in
6 these rules to the fact that the legislature passed and
7 adopted a minimum state energy code, so my suggestion was
8 somewhere in it that you make a reference to that, that
9 all developments must comply with the 2015 International
10 Energy Conservation Code or an equivalent code as
11 required by state law. And maybe that's in some other
12 rule package at TDHCA.

13 And then in terms of this tiebreaker -- and
14 maybe tiebreaker isn't the right place to put it, maybe
15 it's really in the -- and we can get into this later when
16 you get to the actual points for different aspects --
17 something like saying that applications that are built to
18 higher energy and water conservation codes such that it
19 will lead to lower water and energy bills for residents
20 will be favored. You know, some way in these rules to
21 give more incentives for more energy efficient, water
22 efficient building I think would be appreciated. And if
23 it doesn't go there, then later when we get to site
24 development, I can suggest some language there.

25 So thank you.

1 MR. BOYD: I'm John Boyd with the New Rock
2 Companies.

3 A quick note as to the tiebreakers. I agree
4 with the previous speaker, Ryan. When we look at sites,
5 we're looking for good real estate, we're looking for
6 sites that achieve all of the goals in the QAP for that
7 year, and so putting it off till the end it is a roll of
8 the dice, which you have to wait till other applications
9 are submitted before we even know that. And I fully
10 agree with bringing the linear distance to bring the
11 number one tiebreaker.

12 Thank you.

13 MR. SISK: I'm Tony Sisk, partner with
14 Churchill Residential, and that's what I wanted to say
15 also, I agree with Ryan Combs and the last speaker that
16 we spend a lot of money and time trying to identify good
17 sites and if we knew that the distance from another
18 existing tax credit deal was the number one tiebreaker,
19 that would make it a lot easier to find good sites. So I
20 agree with them very much.

21 MR. VASQUEZ: Does staff have any comment as to
22 whether distance could or couldn't work?

23 MR. KROCHTENGEL: My name is Zachary
24 Krochtengel.

25 I guess I'm in the minority, I actually really

1 like this tiebreaker. I think that the CHAS is a really
2 interesting data set to use because you're now building
3 in a census tract with a population that actually rent
4 burdened. I think that there are problems with the CHAS
5 data, particularly when it comes to kind of college towns
6 where the rent burdened population is very overstated
7 because of the presence of college students. I think the
8 number one CHAS data census tract in the entire state is
9 in College Station, and that's because of those college
10 kids. They're not going to live in a LIHTC building, but
11 the poverty rate is 76.

12 So I think what staff did to make this a two-
13 part tiebreaker is actually a pretty elegant solution to
14 take out the weaknesses of the CHAS data and really push
15 it to lower poverty census tracts but census tracts with
16 rent burdened people, so I think you're bringing houses
17 to places where people need it. I think if you go to
18 distance first, I think it really drives development
19 further to the outskirts of towns.

20 If there's already a development in that town,
21 it will either drive it to the outskirts of town or drive
22 it further away from amenities, and I think if you were
23 going to take distance as the first tiebreaker, the
24 biggest thing you have to do is really tighten up
25 amenities. Because right now, I think if I threw a dart

1 at the board I think I could come up with enough
2 amenities to probably get an opportunity index score of
3 perfect.

4 So I personally think the distance isn't the
5 right thing to do because of that first tiebreaker
6 because of that driving force of pushing you away from
7 other developments. I like the first tiebreaker. I
8 think that another issue with the first tiebreaker is
9 that the poverty rate threshold will affect certain
10 regions differently than others, and I look to the Valley
11 in that specific instance. I probably didn't understand
12 that two census tracts that did not meet that poverty
13 threshold did not go to the CHAS data as the second part
14 anyway. I would have liked to have probably seen that as
15 well, but overall, I think this is an interesting
16 tiebreaker that actually follows a data-driven approach
17 to bring housing to people that need it but also to bring
18 housing to places where it's high opportunity.

19 Thank you.

20 MR. VASQUEZ: Thanks, Zach.

21 MR. IRVINE: Tim Irvine.

22 I would just like to underscore that the
23 proposed first tiebreaker tracks the number one statutory
24 purpose of the program, encouraging the development and
25 preservation of appropriate types of rental housing for

1 households that have difficulty finding suitable
2 affordable rental housing in the private marketplace. So
3 that's the statutory underpinning for it.

4 MS. HOLLOWAY: Marni Holloway again.

5 Frankly, if we use distance as the first
6 tiebreaker, it would be like a unicorn to get to the
7 second one, really.

8 MR. BRADEN: I mean, I appreciate the need for
9 predictability that the developers have talked about, but
10 I think what Tim talked about, if you think about the
11 policy reasons why we're doing this, it seems like you
12 have the tiebreakers right. I mean, to look for poverty
13 levels and rent burden, put the housing where people need
14 it, to me that makes a lot of sense, so I'm okay with
15 leaving the tiebreakers as is. If you have other
16 suggestions of how it could be predictable, we're fine
17 with that, but I do think the policy reason for it needs
18 to put priority.

19 MS. HOLLOWAY: The predictability would come
20 from us setting a number.

21 MR. VASQUEZ: And the variability is they're
22 year to year on where that median level is. Is it
23 relatively similar?

24 MS. HOLLOWAY: So we looked at last year and
25 the statewide median poverty rate for all pre-apps was

1 11.6 percent, so if this was a tiebreaker in 2017, the
2 full applications that tied would need to be below that
3 11.6 percent to move to the rent burden item. Keep in
4 mind that this is a median so it's in the middle. Half
5 of the applications would go to this first tiebreaker and
6 half of them would not.

7 MR. BRADEN: So that's a possibility, but I'm
8 not sure what the committee would think about using the
9 data from the prior cycle to set that number.

10 MS. HOLLOWAY: I'm just using that as an
11 example.

12 MR. BRADEN: No, but I mean it's something that
13 we could discuss. We could look at the data to set the
14 number and then there would be some predictability
15 associated with it.

16 MS. HOLLOWAY: That would be one way to
17 approach it, absolutely.

18 MR. VASQUEZ: Again, actually I'm curious as to
19 that figure. Is there a small variability band of 11 to
20 12.1 or something like that, or is it sometimes 11.6.

21 MR. BRADEN: With the three-year average from
22 the last three years.

23 MS. HOLLOWAY: I think if we went back to a
24 three-year average, it would have more predictability.
25 It really is going to depend quite a bit on which

1 applications are awarded in that previous year. For
2 instance, this past year, because we had quite a few more
3 CRP applications, that poverty level number would have
4 been higher. If we're looking at years where we have
5 more opportunity zone applications for whatever reason,
6 that number is likely to be lower.

7 MR. VASQUEZ: Again, I think we recognize
8 trying to balance out the positions of some of the
9 development community. I can fully understand why you'd
10 want predictability, but at the same time, I kind of
11 agree that the distance would, especially in urban areas,
12 just really push things.

13 MS. HOLLOWAY: It would.

14 MR. VASQUEZ: But maybe there is a way to put
15 in the average.

16 MS. HOLLOWAY: So average over the past few
17 years or the number from the past year.

18 MR. BRADEN: I wouldn't use the past year. I
19 think if you look at the past three years, the median,
20 and then average those and see what the number is. But I
21 mean, we're looking for input here. Does that give
22 people predictability?

23 MR. COMBS: Ryan Combs.

24 Yes, I actually think that's a great idea,
25 Marni. And really, it doesn't matter what the number is,

1 if there's a logical reason as to what that number is,
2 then that gives us some predictability that we can go out
3 and really chase great real estate and make
4 representations to land sellers, make representations to
5 cities, whatever that is.

6 I do want to kind of give a little more thought
7 to the distance, whether the Board decides on that or
8 not, there is a lot in the QAP now that really kind of
9 got its birth last year and the year before that already
10 incentivizes developments to be in larger cities. We've
11 got urban core points and then we've also got underserved
12 points that you can get up to five points if you're in a
13 census tract that's wholly within a city and surrounded
14 by census tracts that don't have any other tax credit
15 developments under 15 years. And so there's already
16 several, at least those two point categories that are
17 pushing people into urban areas, which is why we saw a
18 lot of CRP applications this past year.

19 If we were to go to a tiebreaker, which is down
20 the line so those have already gotten awarded, if we go
21 to a tiebreaker that incentivizes dispersion, my thought
22 is that we would get a little more balance, we would have
23 some CRP, we would have some urban, and we would also
24 have some that are moving into emerging markets or even
25 growth corridors, which is really great real estate.

1 But either one of those, I just wanted to give
2 a couple of ideas there.

3 MS. MARTIN: Hey there. Audrey Martin with
4 Purple Martin Real Estate.

5 I also like the idea of maybe looking back and
6 doing an average of the median over some period of time
7 before the current round. I think that is a good
8 solution to deal with predictability.

9 The other thing that I wanted to suggest as an
10 idea is whether it would be possible to decouple the
11 median poverty and the rent burden and make it number
12 one, two and three. I'm not sure what the reason was
13 that those were paired up, but that would be another way
14 to keep the rent burden in the mix beyond the point at
15 which you are just looking at a thumbs up or thumbs down
16 for the median poverty.

17 MR. VASQUEZ: Okay. Thanks.

18 Correct me if I'm wrong, the rent burden is the
19 secondary.

20 MS. HOLLOWAY: It's the second part of the
21 first tiebreaker.

22 MR. BRADEN: So if we go to this average, we
23 lose the rent burden?

24 MS. HOLLOWAY: Not necessarily. We certainly
25 could go to the average and keep the rent burden, you

1 know, keep the item as is, but rather than the median
2 across all the pre-apps, be the average of the past three
3 years median. And actually, in that instance it might
4 make more sense to go to full applications than pre-
5 applications.

6 MR. BRADEN: That's true.

7 MS. HOLLOWAY: The other consideration, though,
8 is if we do that and if we talk about being below that
9 average of the medians for the last three years, over the
10 years it's going to keep pushing that median number lower
11 and lower and lower. And that may or may not be what the
12 Board is seeking to do or could be that in future years
13 there's an adjustment saying, wait a minute, this has
14 gone too far, everybody has to be below 5 percent to try
15 to make this first tiebreaker.

16 MR. BRADEN: A couple of things come to mind.
17 The first speaker, her point is, I think, some of what
18 Ryan, Mr. Combs just made, that the poverty tiebreaker is
19 early on in the process so are we using it twice and are
20 we keeping it as part of the tiebreaker when it was part
21 of -- for them even to get a tiebreaker the poverty was
22 part of the analysis before they even get to that stage.

23 I really defer to staff. I mean, I do think
24 it's in our statute, it is a point of policy and it's
25 important enough that if staff says it's your

1 recommendation that that ought to be the first
2 tiebreaker, I'm okay with that. So then assuming that's
3 the case where you going to put it in this process, I
4 think what we're trying to do is, okay, let's go with it
5 and make it better.

6 And I think Zach -- I'm sorry, I forgot your
7 last name -- made the point about when you're coupling it
8 with rent burden that sort of keeps it from skewing, with
9 college kids and other people involved, and you don't
10 want people building all this stuff -- all due respect to
11 the Aggies -- in College Station and wherever else, so I
12 think that made sense. So if we go to an average, I do
13 think you ought to keep that concept in of rent burden as
14 part of that analysis.

15 And I do agree, maybe you ought to go to the
16 full application and maybe look at a three-year average
17 and then use that number. I mean, you're right, at some
18 point maybe it keeps being driven down and we're going to
19 have to reassess it, but maybe we can try that for this
20 shot.

21 MR. VASQUEZ: I concur. That sounds
22 reasonable, giving it a little bit better predictability.

23 MS. HOLLOWAY: And that's something that we
24 absolutely could operationalize easily.

25 MR. VASQUEZ: One more comment.

1 MS. SANDERS: Elena Sanders, BETCO Housing Lab.

2 My only comment is with regards to how the
3 poverty levels vary across the State of Texas, and add
4 the areas we consider, Regions 11 and 13, separately
5 because the poverty levels vary so differently. My only
6 suggestion would be to like poverty levels for 11 and 13
7 and do 11 and 13 average separately because their poverty
8 levels are always so much higher. If you don't do that,
9 often you're going to end up always skipping the first
10 tiebreaker in those regions because the poverty levels in
11 11 and 13 will always be higher than the median across
12 the rest of the state, so you will essentially always be
13 using distance.

14 So that's it.

15 MR. KROCHTENGEL: I was going to echo that same
16 point of either trying to do a multiplier on the last
17 three years or somehow adjust it, and I think it's
18 actually not just 11 and 13, I think other subregions do
19 have higher poverty that maybe no census tract will
20 qualify for this. And I think that when you look at that
21 three-year data it's going to be artificially skewed
22 lower because what was it, two years ago, the first
23 tiebreaker was poverty rate and there were very few CRP
24 deals that first year, so it worries me that you're going
25 to drive that poverty rate very low to where we're going

1 to abandon the CHAS data altogether in regions that have
2 higher poverty rates.

3 MR. BOYD: John Boyd again.

4 I'll make my point quick, I don't like to beat
5 a dead horse. It's a bit of a fallacy to say that the
6 linear distance would push everything to the suburbs.
7 The scoring criteria already pushes it in certain census
8 tracts who are already pretty much on top of each other
9 generally speaking in areas that rent burdened already.
10 There are several municipalities I worked with to try to
11 get support from, major metro areas, major metropolitan
12 counties and cities that have geographic concentration
13 policies, they want us to be removed from the geographic
14 concentration. The linear distance takes care of that.
15 You have other scoring criteria above the threshold,
16 above the tiebreaker which takes care of the amenities,
17 gets you points for those, so I'm not seeing the huge
18 problem with the linear distance, but I sure am hearing a
19 lot of problems with how to calculate from CHAS data and
20 others, and obviously the lack of predictability.

21 Thank you.

22 MR. VASQUEZ: We're going to take a comment or
23 two more and we're going to wrap up this topic.

24 MS. BURCHETT: Sallie Burchett, Structure
25 Development.

1 My background is a city planner and I think
2 that the distance takes us to places where we don't want
3 to be in society. If I were up there, I would be
4 suggesting closest to the grocery store, something where
5 someone could use to enrich their lives. So that's what
6 I don't like about the farthest being the driving factor.

7 We could use the same poverty rate percentages that we
8 already use in the QAP for the two regions which is 20
9 percent for every place but 11 and 13 which I think is
10 35, or it's a little bit higher, so that way it would be
11 consistent, it's already defined, and it's not far from
12 the median.

13 Thank you.

14 MR. VASQUEZ: So 11 and 13 already have special
15 figures?

16 MS. HOLLOWAY: Yes. Because the poverty rates
17 tend to be higher in those regions, yes, absolutely they
18 have some special considerations.

19 MR. BRADEN: Thoughts?

20 MS. HOLLOWAY: Well, so if we like the idea of
21 the average of the medians over the past few years and
22 we're concerned about 11 and 13, we could just take that
23 same difference and add it to the median so it also
24 continues to float.

25 MR. VASQUEZ: I think that obviously we're not

1 going to be able to satisfy everyone 100 percent on this,
2 but based on this discussion, I think that's a reasonable
3 compromise. It at least gives some certainty but still
4 addresses the mandate of the statute. So can you work on
5 that?

6 MS. HOLLOWAY: Certainly we can put that
7 together.

8 Okay. Moving on to 11.8 pre-application, for
9 pre-applications we are limiting the pre-apps to one per
10 site control document to eliminate the recent practice of
11 submitting multiple pre-applications for a single site.
12 We also are clarifying that the pre-application becomes
13 part of the full application, they are not freestanding,
14 the pre-app becomes part of the full app if submitted.

15 We have created a stricter description of the
16 records an applicant must maintain in order to prove up
17 their search for neighborhood organizations. And now
18 we're getting into scoring items.

19 Anything?

20 MS. RICKENBACKER: Good afternoon. Donna
21 Rickenbacker with Marque.

22 This clarifying language that staff has put
23 into how we, A, search for neighborhood organizations,
24 and two, what constitutes being on record with the county
25 really concerns me on multiple levels.

1 First, I'm not quite sure what we're trying to
2 solve, so maybe if I had a better understanding of
3 staff's position on this, I would get maybe a little bit
4 more comfortable, but what I see happening is what was
5 happening many years before you all were Board members,
6 especially in cities like Houston that has super
7 neighborhoods, and those super neighborhoods, we would
8 have to notify them. Most of them do have bylaws, if you
9 will, and you would have to notify them and you would be
10 required -- what happens is that these super
11 neighborhoods that you're required to notify end up
12 opposing, in most instances, the developments. And so
13 I'm trying to make sure that we're not kind of going back
14 to those days, and I feel like we drafted, over several
15 cycles, language that really stopped a lot of that type
16 of behavior and allowed developments to move forward in
17 some of those boundaried super neighborhoods.

18 That, coupled with in other areas outside the
19 city of Houston, I've seen situations where an individual
20 or a group of individuals that are just NIMBYs and didn't
21 want it in their areas would create these neighborhood
22 organizations to stop folks with moving forward with
23 proposed affordable developments.

24 So I'm very concerned about this language and
25 I'm very hopeful that we can go back to what I feel was

1 some pretty good language as it related to what's on
2 record with the Secretary of State and county for
3 purposes of notifying neighborhood organizations.

4 That, also with this language that what's
5 acceptable means searching for neighborhood
6 organizations, anybody that's done a search of the
7 Secretary of State's Office and they're required to put
8 in the word "neighborhood", I mean, my god, the number of
9 hits is going to be just endless. So I just don't think
10 that that would be a good practice and require those
11 applicants then to retain that level of documentation. I
12 just don't know, again, why we're doing this and would
13 like for consideration of going back to what we had last
14 year.

15 Thank you.

16 MS. DULA: Tamea Dula with Coats Rose.

17 I think that with this change the heart is in
18 the right place but in practicality it's going to be very
19 difficult to implement this. The way it is written it's
20 not clear whether this search to identify neighborhood
21 organizations is an internet search or a Secretary of
22 State search or a county search. I would think that it
23 would be an internet search to identify entities. And
24 this clearly comes from the St. Elizabeth Place issues
25 that we had at the last Board meeting.

1 But if you use the search items that are in
2 here, if you use them all together, god knows what you're
3 going to get, but if you use them separately you're going
4 to have thousands of returns and hits. So how many
5 returns will you get on the word "homeowner" for
6 instance. Then when you talk about items
7 of record with the county clerk's office, the county
8 clerk only really records bylaws or organizational
9 documents for property owners associations created by
10 developers. Other entities don't go to the county clerk
11 to record their documentation. The documentation
12 recorded there doesn't give any indication whether there
13 is an entity in good standing, as is suggested here. It
14 could be recorded 40 years ago and be defunct for the
15 last 30 years, but it's still of record and you can't
16 tell.

17 And the item with regard to being of record
18 with the Secretary of State means it must be in good
19 standing. Texas no longer produces something that says
20 you are in good standing with the Secretary of State. In
21 order to show good standing equivalent to other states'
22 concepts of good standing, you'd have to produce a
23 certificate of fact that says that the entity still
24 exists and also a certificate of account status from the
25 Comptroller's Office which says that they've paid their

1 franchise taxes. Now, some of the nonprofits won't be
2 able to get that because they're not enrolled with the
3 Comptroller's Office because they don't pay franchise
4 taxes.

5 So I see this as being a very impractical way
6 to handle the situation. Thank you.

7 MR. VASQUEZ: Ms. Dula may have made a good
8 observation about the good standing certificate, which I
9 think she's correct, it doesn't exist anymore.

10 MR. BRADEN: I actually agree with the comments
11 made on this section. I know we're trying to deal with
12 the St. Elizabeth situation, but part of that, I'm not
13 even sure if this language worked whether it would
14 address that situation, because part of the discussion at
15 the Board level with respect to that situation is that's
16 a statutory requirement and the statute says that
17 evidence that the applicant has notified the following
18 entities with respect to filing of the application, any
19 neighborhood organization on record with the state or
20 county in which the development is to be located. Even
21 if you make good faith efforts, like the applicant did in
22 that instance, to notify everyone but they missed one.
23 At the time the Board was informed that the applicant had
24 not complied with the statutory requirement because there
25 was no evidence that the applicant had done this, and I'm

1 not sure this really addresses that per se.

2 MR. ECCLES: I think the attempt was, as you
3 said, it did deal with the St. Elizabeth Place situation
4 but more the horror story that it could have been if
5 there was a neighborhood organization that came into
6 existence and merely called itself XYZ Corp but they were
7 a neighborhood organization and they couldn't reasonably
8 be found.

9 I would agree that there's probably no harm in
10 maintaining the old language. The problem is that we
11 have a statutory requirement of on file with the
12 Secretary of State, but there's no separated database of
13 neighborhood organizations with the Secretary of State's
14 Office so there is no distinct way of saying give me the
15 neighborhood organizations that would cover these metes
16 and bounds, and that's difficult, the perception was, for
17 the developers, the applicants who are trying to say we
18 want to show that we've given you full notification but
19 might run into a situation where a shadow organization
20 had been created but through no fault of their own,
21 through no fault of diligent searching, they were not
22 able to come up with it.

23 I would agree it was an attempt to do something
24 that may have just missed the mark slightly.

25 MR. BRADEN: So currently how do applicants do

1 this? I mean, I guess there's some search that takes
2 place for them to make the certification.

3 MS. HOLLOWAY: Certainly you can search
4 entities on the Secretary of State website for certain
5 key words. For instance, Fifth Ward, we were able to
6 find the other neighborhood organization listed on the
7 Secretary of State website. You can do the same search
8 on county public records, as Tamea mentioned, that will
9 get you CCNRs as articles and bylaws but would also get
10 you DBAs. And as Tamea mentioned, finding out if those
11 organizations are in good standing is going to take
12 additional steps.

13 MR. VASQUEZ: Again, being the non-lawyer, I
14 think the point of the St. Elizabeth situation is whether
15 they could evidence that they put forth good faith
16 efforts to identify all these groups, and the intent is
17 to make sure that you're notifying everybody that has an
18 interest. Is there simply a way to amend this language
19 or delete this but just giving the applicant the
20 opportunity to evidence that they made full good faith
21 efforts to identify and notify each entity per the
22 statute? Because the statute doesn't give a whole lot of
23 detail on how you do that.

24 MS. HOLLOWAY: No, it does not.

25 We certainly could simplify this language about

1 retaining records of their search and move the bulk of
2 this to the manual as a suggestion of these are ways to
3 find these records.

4 MR. BRADEN: When this came across I was
5 wondering is there any place in the current application,
6 or what if we created a certificate that basically said
7 we have notified which is the statute, so then that is
8 evidence that they've complied with this requirement that
9 could be submitted to the Board. Now, I don't know what
10 we'd do if somebody comes up and says, well, even though
11 they sent their certificate it doesn't really matter
12 because they never notified me.

13 MS. HOLLOWAY: So that's exactly what happened
14 with St. Elizabeth.

15 MR. BRADEN: Right.

16 MS. HOLLOWAY: But the application requires
17 listing all of the organizations that have been notified
18 and at full application they're required to certify that
19 there haven't been any changes.

20 MR. BRADEN: But this would be a little
21 different because the certification would track the
22 language of the statute. Right? As opposed to saying
23 these are all the people we've notified, they would say
24 that we've notified any neighborhood organization on
25 record with the state or county. Now, I'm not sure

1 people want to do that. But if that had happened with
2 St. Elizabeth and that would be evidence, and then
3 somebody else is standing up and saying, well, you never
4 notified me, I think the Board came to the conclusion
5 that you had actually notice. And to me, it would seem
6 like, well, maybe we could make them -- there is evidence
7 there and you had actual notice, maybe we could have let
8 that one slide.

9 I don't know. Maybe we're trying to draft for
10 one unusual situation and maybe we just leave it alone,
11 first do no harm kind of thing.

12 MR. VASQUEZ: I like your suggestion. Again,
13 there may still be language we need to put in to
14 emphasize that they need to fully document they've made
15 every effort to comply with the statute in searching
16 county and state records, but in, as you said, the rules
17 add more suggestions on how to comply with this not being
18 included but not limited to the following steps. And I
19 think that the community, since they've heard this so
20 often now and saw what happened to one group, everyone, I
21 hope, will be more diligent in addressing this and making
22 sure they're dotting all the I's and crossing all the
23 T's.

24 MR. BRADEN: So what's your suggestion?

25 MR. VASQUEZ: So we take out this language.

1 MR. BRADEN: Leave it as is.

2 MS. HOLLOWAY: Take out this new language --
3 this is what I'm hearing, take out this new language that
4 has been commented on, make sure that there's something
5 in there that requires applicants to maintain evidence of
6 their search for neighborhood organizations.

7 MR. VASQUEZ: Their search and notification.

8 MS. HOLLOWAY: Right. We are going to require
9 notification but we can add search, and then these
10 potential ways move to the manual, you know, including
11 but not limited to look at these things.

12 MR. BRADEN: I'm impressed with Marni's Board
13 to English dictionary. Good job. I agree with that.

14 (General laughter.)

15 MR. VASQUEZ: Direct staff to do what you said.

16 All right. So moving on to scoring items, we
17 have added income averaging to the scoring item for
18 income level of tenants. This is the new option that's
19 available to applicants under the spending bill that also
20 gave us the 12.5 percent in the qualified opportunity
21 zone. The percentages that we've used in this scoring
22 item are consistent with applications received over the
23 past five years, so that we're trying to be consistent
24 with what we've done in the past regarding these income
25 levels.

1 All right. We've made some minor adjustments
2 to the opportunity index, a technical correction, and
3 then split up for public transportation for lesser
4 service or more service, so like sites that would be in
5 transit-oriented districts or something like that that
6 are getting more frequent service get more points.

7 As a new item to underserved area we've crafted
8 a scoring item that seeks to address the issues of
9 gentrification by looking for census tracts with both
10 high poverty and high rents. We've also added an item
11 that addresses at-risk or USDA set-aside properties that
12 are more than 30 years old and have not received federal
13 funds for rehabilitation.

14 The Section 811 rule has just been modified for
15 clarity.

16 Going down to number 7 on urban core, this item
17 has been changed to maintain roughly equivalent
18 population density among the largest cities and to
19 prevent the measurement from extending into more suburban
20 areas of smaller cities. What we've done is maintained
21 the two miles on larger cities and then on the smaller
22 cities it's within one mile of municipal government
23 administration building whereas in previous years it was
24 within two miles. I believe there are some folks that
25 want to comment on that one.

1 MR. VASQUEZ: Come on down.

2 MR. SISK: I'm Tony Sisk, Churchill
3 Residential.

4 Our understanding of urban core was that it was
5 designed to stimulate housing not necessarily in the CBD
6 but within a reasonable driving distance of residents to
7 the CBD. Going to the one mile for cities between 200-
8 and 500,000 we feel is inconsistent with the cities above
9 750,000 in population. We're in North Texas, so in the
10 case of North Texas that's four miles for Dallas and four
11 miles for Fort Worth. In our opinion, if we went down to
12 one mile for cities of 200- to 500,000, that's
13 inconsistent with being able to go out four miles for
14 Dallas and Fort Worth, because when you get out that far
15 you're really not in urban core, in our opinion.

16 The rule was changed where a city from 500,000
17 to 750- could retain the two miles but there's only one
18 city in Texas, that being El Paso, that fits into that
19 category, whereas there's a number of cities in Texas
20 that are in the 200,000 to 500,000. We feel like that
21 all cities in the 200- to 500- have issues in the rings
22 out for two miles, and if you limit that on the multiple
23 cities -- again, there are multiple cities in that
24 category, one that was retained, El Paso, with two
25 miles -- first of all, there's not very many sites,

1 there's not many people that live within one mile of city
2 hall in those size cities, so what it does is it runs up
3 the already overpriced land and cost, it's hard to find
4 sites that are big enough, and there's some zoning
5 issues, and it increases competition so it encourages
6 bidding wars with in those areas.

7 And lastly, we felt like that urban core was
8 set up for a two-year policy but by changing this from
9 two miles to one mile, that's a material change for a
10 number of cities that are in 200- to 500,000 population,
11 so we would submit that leave it alone for this year for
12 the 200- to 500,000 and two miles, like El Paso was left
13 alone, and work on it the following year.

14 MR. VASQUEZ: So your suggestion is every
15 municipality under 750,000 gets two miles.

16 MR. SISK: It would stay as is with a two-mile
17 ring for cities that are 200,000 to 750-, if you wanted
18 to leave it that way. What you would do is you would add
19 a bunch of cities.

20 MR. VASQUEZ: Sure. I get it, I understand.
21 It's interesting there's only one city, it's only El Paso
22 that's in the middle band.

23 MR. SISK: Right.

24 MR. VASQUEZ: Anyone else on this subject or
25 area?

1 (No response.)

2 MR. VASQUEZ: Marni, do you have any comment if
3 we kept it?

4 MS. HOLLOWAY: As I mentioned earlier, we were
5 looking at a couple of things. One was we were starting
6 to extend into suburban areas but the other is population
7 density. So these population numbers, Patrick, are from?
8 2016. For instance, the City of Irving population was
9 232,113, the population within that urban core
10 measurement on the old measurement was 232,113. So we
11 start to wind up with situations that like almost the
12 entire city units are within that urban core area.

13 Also, the intent when we first designed the
14 urban core measurement was to look at walkable, dense,
15 access to transit, employment opportunities, retail
16 space, entertainment, like downtown. Like if you lived
17 in downtown Austin, all of those things would be within
18 easy walking distance. Since then we've gone to smaller
19 and smaller cities but we hadn't adjusted that radius
20 measurement, and this is just correcting that oversight.

21 MR. VASQUEZ: So is there any harm in still
22 making it two miles instead of down to one for the under
23 500-?

24 MS. HOLLOWAY: I don't know that there's any
25 harm. It means that just about any development in urban

1 is likely eligible for those five points.

2 MR. VASQUEZ: Are you worried about Irving?

3 MR. BRADEN: I'm trying to figure out what
4 would be the urban core of Dallas.

5 MR. VASQUEZ: Mr. Sisk, do you have anything
6 else to add?

7 MR. SISK: (Speaking from audience.) Do I need
8 to come up front?

9 MR. VASQUEZ: Well, ideally. We're recording
10 all of this.

11 MR. SISK: My only comment to that is these
12 cities that I'm talking about are much bigger than a two-
13 mile ring, so there's plenty of area that's outside of
14 urban core, so I wanted to make that distinction on all
15 of the cities where we are in North Texas.

16 MR. IRVINE: Tim Irvine again. Just taking
17 advantage of a lull in the conversation.

18 Thinking back to when urban core was created, I
19 understand Tony's perspective about driveability to
20 central business district. The reason urban core was
21 created was because in certain very large cities there
22 was a trend taking place, gentrification, and it was
23 economically displacing historic neighborhoods and this
24 was an attempt to preserve the ability to have affordable
25 housing continue to build stock in those neighborhoods.

1 I don't think it's so much a geographic concern as it is
2 an economic development trend concern, so it makes it
3 that much harder.

4 MR. VASQUEZ: So there's no reason, unless
5 Marni has some other factor than was just discussed, on
6 the two-mile to every city under 750,000.

7 MS. HOLLOWAY: So the number that I was just
8 quoting -- and Patrick was explaining this better to
9 me -- for instance, in the City of Houston to get to that
10 urban core distance, you're looking at 560,146 in a city
11 with a population of more than 2.2 million, so that
12 560,000 times four gets you to the population. In the
13 smaller cities it's the entire population times one, so
14 it's not necessarily all of those people are within that
15 mile.

16 I think, as Tim mentioned, the original intent
17 was to provide a scoring item that supported development
18 in the urban core in these rapidly gentrifying areas. Is
19 there any harm? I don't know, I couldn't speak to that
20 at this point.

21 MR. VASQUEZ: Make everything under 750,000 two
22 miles.

23 MS. HOLLOWAY: Make them all two miles? Just
24 go back to what we had before?

25 MR. VASQUEZ: Leave the four miles for the

1 larger cities, upping that to 750,000.

2 MS. HOLLOWAY: At four miles?

3 MR. VASQUEZ: Within two miles is everything
4 under.

5 MS. HOLLOWAY: Is 500,000 down to?

6 MR. VASQUEZ: 749,999. In your document here,
7 leave the 750,000 population within two miles and then
8 the population of the cities 250,000 to 749,999, and then
9 strike the rest of the one mile.

10 MR. BRADEN: I'm fine with that.

11 MS. HOLLOWAY: Okay. All right.

12 Moving on amongst the scoring items, on
13 readiness to proceed we've added a provision so that non-
14 priority applications, it pushes out the deadline for
15 applications that are in non-priority status for some
16 period of time. So if someone hadn't been working on
17 getting their deal to closing because it wasn't looking
18 like they were going to win, and then all of a sudden
19 something happens on the list and they are going to win
20 and they've got some catching up to do, and this
21 provision allows them that catch-up.

22 On the state rep scoring item it is modified to
23 allow the representative to provide a letter that says my
24 constituents support this development rather than
25 requiring a personal statement of support.

1 The concerted revitalization plan item has been
2 modified for urban developments to clarify the
3 Department's requirements.

4 Further on in the scoring, we're down to (e) (2)
5 at this point, the cost per square foot scoring item has
6 been increased by 5 percent, and the common area that is
7 included in the net rentable area for supportive housing
8 developments has increased by 25 square foot, up to 75
9 square foot total. Also in (e) under number (4)
10 leveraging, the leveraging percentages were all increased
11 by 1 percent.

12 And then at the end of the QAP in (f), the
13 factors that affect scoring and eligibility for current
14 and future rounds, this section describes penalties and
15 we've modified that for clarity because there were a
16 couple of things in there that just were not clear.

17 So moving on to 11.1(o), this is the third
18 party request for administrative deficiencies. Language
19 has been added to the RFAD section regarding requests
20 that are actually questioning staff's decisions regarding
21 an item rather than presenting new information. As this
22 rule has been modified, we will not be considering those
23 RFADs, they will be disregarded.

24 Moving on Subchapter B. Under undesirable site
25 features, Subchapter B number 101(a) (2), I think, the

1 railroad item under undesirable site features has been
2 modified to reflect recent Board decisions.

3 The next one is undesirable neighborhood
4 characteristics. We've changed the name here to
5 neighborhood risk factors so it's not quite so seeming
6 like a negative. So within this item the distance to an
7 adjacent census tract with a high crime rate has been
8 changed, and there's additional information regarding
9 mitigation that has been added.

10 Anyone want to speak to those?

11 MS. LATSHA: Good afternoon. I'm Jean Latsha,
12 I'm with Pedcor Investments.

13 And I did want to speak to the neighborhood
14 risk factors. This was a change from the first draft
15 that we all saw and we all kind of commented on. I'll
16 say there are few things that kind of in general, I
17 think, go against some of what occurred with the Board
18 with respect to the rules and just kind of making them a
19 little shorter, kind of getting rid of -- I couldn't
20 stand that gotcha term, but I'll go ahead and use it
21 here -- there are a lot of additional mitigation
22 requirements here that would be extremely difficult to
23 meet.

24 What I see this rule as trying to do is looking
25 at a site kind of holistically. Right? You look at

1 poverty, you look at blight, you look at schools, you
2 look at crime. A lot of sites have a blemish there.
3 Right? One school that doesn't quite meet standards or a
4 site with high poverty rate or something like that. I
5 think when you get into this kind of nitty-gritty detail
6 in a rule itself and then you find a site that has one
7 blemish and then you're not able to meet this litany of
8 requirements to mitigate for that blemish, I think you
9 might wind up passing on some otherwise pretty good
10 sites, especially coming from someone who we do mainly
11 tax exempt bond developments so we're not competing for
12 credits and there's not another site right behind us that
13 is going to use those credits.

14 I would suggest that some of these things, I
15 kind of get where you're coming from but maybe if the
16 language -- if staff wanted to leave the language
17 somewhere to maybe put it in the manual. There are other
18 places in the rule, for instance, under the resolution
19 with no objection where it says there is an acceptable
20 but not required form in the manual, so if you do these
21 things that are over here, then you're very likely to get
22 a thumbs up, but if you don't do them or if you stray a
23 little bit from that acceptable format and you present
24 some things that are pretty reasonable, you can still be
25 okay.

1 MR. VASQUEZ: Let me interrupt, because I think
2 I'm reading this completely differently than you are, in
3 that we're trying to put in language that's meeting what
4 you want. And staff or someone correct me if I'm wrong.

5 I think, again, based on recent Board decisions, we're
6 trying to -- who says that gotcha thing? -- we're trying
7 to remove that gotcha factor and if the community or the
8 school system we're not just automatically eliminating a
9 development because of a certain factor. If there is a
10 concerted revitalization plan, the police jut put in a
11 new substation in that area to help fight crime, I
12 believe this language is giving that developer more
13 flexibility and the application more flexibility. If
14 you're reading it differently, tell us how you're seeing
15 that differently, because I think it's meeting what you
16 want.

17 MS. LATSHA: I am reading it differently. So
18 the way that I'm reading this, when you go to page 66,
19 it's something, something, something, two, so I'm reading
20 this as, okay, if you have a school that does not have a
21 Met Standard rating, everything else is fine, the
22 property is fine, crime is fine, but you would be
23 required, because it's in the rule, the school district
24 has confirmed that a school-age person at the proposed
25 site may, as a matter of right, attend a school in the

1 district that has a Met Standard, and then we're supposed
2 to provide no-cost transportation. I think that's a lot
3 to ask if you're looking at a site that has one school
4 that doesn't have a Met Standard rating.

5 And not only that, I think it would be a lot to
6 ask of Compliance to continually monitor something like
7 that when you've got school ratings that change every
8 year. Even the system behind the school ratings changes
9 every year but then they're supposed to come out, decide
10 if the school has a Met Standard rating or not, then
11 decide if you're providing transportation. I find this
12 much more onerous than what was previously in the rule,
13 because I do think that what staff is trying to do is to
14 give us options on how to mitigate for some of these risk
15 factors. And I understand why the risk factors are
16 there, I'm not asking those to be taken away, but I think
17 the way that I'm reading this rewrite is that the
18 requirement to find your site eligible is a lot more
19 onerous than it was in the past.

20 I'll just leave it at that.

21 MR. VASQUEZ: Mr. Irvine.

22 MR. IRVINE: Tim Irvine.

23 Yes, we're 180 degrees opposite that reading.
24 We were basically saying, look, when you've identified
25 one of these situations that would require some

1 mitigation in order for the site to be eligible, here are
2 some things that because they are in rule, if you meet
3 any of them those are automatically, because they're rule
4 compliant, those are acceptable mitigations. It doesn't
5 take off the table the possibility that you may come up
6 with some other form of mitigation which would require
7 your consideration.

8 MR. VASQUEZ: And actually, as I'm skimming
9 back through this, Jean, if you look at the top of page
10 64 there is romanette (iv) before all these sections that
11 I think you're referring to that says, Evidence of
12 mitigation for all the schools in the attendance zone
13 that have not achieved Met Standard will include, but is
14 not limited to, jointly satisfying these sub-clauses. I
15 think it's giving options rather than limitations.

16 Is that the staff's intent?

17 MR. BRADEN: And that's how I read it too.

18 MR. VASQUEZ: So again, I think that preamble,
19 that little introductory point is just saying here's
20 examples. And I'm looking at staff nodding heads, and I
21 don't think the intent is at all saying you have to do
22 all this, it's examples of what you can do.

23 Deputy Director Brooke Boston.

24 MS. BOSTON: Brooke Boston.

25 You're exactly right, that was our intent, and

1 if anything, we saw it as if you want a safe harbor these
2 are the things you could do, we're laying them out for
3 you but they're not exclusionary. You're right.

4 MR. MOREAU: Walter Moreau, the director of
5 Foundation Communities. We're a community-based
6 nonprofit. We build affordable housing that has a lot of
7 services attached, especially health programs, education
8 programs, financial programs. First, I just want to say
9 thank you for investing in our work.

10 And a general comment is that we support the
11 staff draft. We like the mitigating options for learning
12 centers and pre-K programs if we were in a situation with
13 a school that wasn't meeting standard. We have 14
14 learning centers in our communities now, about 1,000
15 kids, all free. They got last semester a 3.43 GPA. We
16 have an intensive pre-K program with one of our local
17 AISD schools. We really are passionate about putting
18 housing and services together as a way to really help
19 folks.

20 So anyway, we support the staff draft.

21 MR. VASQUEZ: Thanks.

22 Just as a side note -- Brooke and I are
23 exchanging knowing glances here -- we are trying to put
24 together a little bit of a summary presentation of all
25 the types of great services that are parts of our

1 developments that all of you are putting in place, and if
2 you have neat programs that have shown results, whether
3 it's pre-K classes to senior assistance programs to
4 anything in between, if you have a story about that,
5 would you mind sharing it with Brooke? Not right now but
6 sometime when you get back to your offices during the
7 week.

8 Okay. Getting back to where we were, I think
9 hopefully we've addressed Jean's concern about the intent
10 of this section.

11 Marni, do you want to continue?

12 MS. HOLLOWAY: Okay. Moving on in that same
13 subchapter to number (2), development size limitations.
14 The maximum size for developments in rural areas financed
15 with direct loan or bond funds increased from 80 to 120.

16 A little bit further on under rehabilitation costs, a
17 rehabilitation standard was added as an alternative to
18 spending a minimum amount on each unit.

19 Further under mandatory development amenities
20 and then to common amenities, under mandatory development
21 amenities we clarified that if a development is using
22 historic tax credits and an amenity that's called for in
23 our list is not something the Historical Commission is
24 going to approve, then the Board can just waive the item
25 off the amenities. There are some items like solar

1 screens that sometimes the Historical Commission will not
2 allow on a development.

3 Under the common amenities section we have
4 reorganized it for clarity into related groupings, an
5 item shall be reevaluated for points based on the cost or
6 difficulty of providing that amenity.

7 MS. FINE: Hi. Tracey Fine. I hope I came up
8 at the right time.

9 We primarily do rehab projects and we do
10 appreciate the expanded list, but year after year we
11 really struggle to meet the minimum point requirements.
12 Even on the expanded list, some of these items are
13 unavailable for a rehab property to take advantage of,
14 things like nine-foot ceilings, walk-in closets, storage
15 rooms, in-unit washers and dryers, covered patios,
16 breakfast bars, upper kitchen cabinets, kitchen islands,
17 pantries. I counted that I could probably reasonably
18 capture seven points for the project that I'm looking at
19 for the next round. This point requirement is a minimum
20 of nine. So I request that either the nine points be
21 lowered back to seven, or that rehabs get a point
22 increase. Right now there is a base score of three, and
23 I would request that that base score go up to five.

24 There are some items that staff would say,
25 well, you could do this, that would be like granite

1 countertops, things like that, and I would be concerned
2 maybe having to go after soft money so I could pay for
3 granite countertops in my rehab properties.

4 MR. VASQUEZ: So overall the list of what it's
5 asking for is just not physically achievable in many of
6 the rehab.

7 MS. FINE: Either they're not physically
8 achievable or they don't make sense. For example,
9 microwave ovens. My last project I just completed I had
10 to order a microwave oven for every single one of my
11 residents in order to meet my points, but this is a rehab
12 and all my residents already had microwaves and they did
13 not know what to do with their second microwave. It also
14 creates a total headache for my management staff for the
15 next 15 or 35 years to maintain microwaves in all of our
16 units. Or there's one that's a keyless entry. We use
17 keyless entries often in our multi-story elevator
18 buildings, but when we have an exterior door, weather
19 problems create lots of havoc with keyless entries.

20 MR. VASQUEZ: So is this a new problem?

21 MS. FINE: So for us this has been an existing
22 problem that we've constantly had a really hard time
23 getting to what was previously seven points, and this new
24 set of language, they expanded the list to be greater but
25 they also expanded the minimum point requirement to be

1 greater as well.

2 MR. VASQUEZ: I see the dilemma. Do you have
3 more?

4 MS. FINE: Actually, I did include in my
5 comments to staff like really specific information on
6 every single one and why I didn't think that we would be
7 able to meet the nine points unless we spent money on
8 things that I would not deem necessary for our rehab
9 property.

10 MR. VASQUEZ: And you've previously sent these
11 comments to staff?

12 MS. FINE: Yes.

13 MR. VASQUEZ: Thanks, Tracey.

14 Is there anything we can do to help address
15 this?

16 MS. HOLLOWAY: Well, and I wasn't aware until
17 Tracey mentioned it that we hadn't increased the points
18 that rehabs start from, we did not, so to be fair, if
19 we're increasing the number of points you have to have,
20 we need to increase the points that rehabs start from.
21 Does that start to get us there?

22 MR. VASQUEZ: That sounds reasonable.

23 MR. BRADEN: Increase the base score.

24 MS. HOLLOWAY: Right. And what we've tried to
25 do, the list over the years for unit amenities and

1 construction features and all these things have looked
2 like stuff just gets tacked on over and over again, we've
3 tried to take a thoughtful look at what's there, take a
4 look at what makes sense, and one of the items was like
5 Cap 5 cable, and get to a place that will work for
6 everyone, and also renumber or re-score based on the
7 difficulty. And we actually took this topic up at one of
8 our monthly meetings, one of our planning meetings, and
9 got a lot of really, really good input on these.

10 And then, for instance, on the development
11 construction features out of a resident survey we've
12 added an option for sound insulation in units because
13 that was one of the top concerns for tenants was quiet.

14 We have made similar changes for resident
15 services. We've also reorganized that section and we've
16 reevaluated for the weighted score of each item.

17 MR. VASQUEZ: Well, finishing up with Tracey's,
18 we are going to adjust the base score for rehab?

19 MS. HOLLOWAY: Yes. And we missed that
20 entirely.

21 On development accessibility requirements at
22 the end of that subchapter, it was modified to meet the
23 HUD requirements that have been previously discussed by
24 the committee, just provided some clarification, and
25 you'll recall that that's something that we took up the

1 last time we met.

2 MR. VASQUEZ: And let me interrupt you because
3 I see Cyrus standing.

4 MR. REED: Cyrus Reed again.

5 I had mentioned before the potential for adding
6 something about energy efficient and water conservation
7 to tiebreaking but I think that's the wrong place. I
8 think the right place is in the section where you get
9 into the specific amenities, and so again, I wanted to
10 mention that I think some language, as a minimum, should
11 be put in that you have to follow the state standards.
12 And again, if that's in some other TDHCA rulemaking,
13 fine, but I think that's important to let the development
14 community know that we did in 2015 adopt a law that
15 increased our state minimum energy standards, and I was
16 very late in making comments, sending them to Patrick, so
17 I'm not sure everyone has seen them.

18 And then I also wanted to mention in a number
19 of places within these common amenities or specific
20 amenities it mentions, you know, air conditioning and
21 you've given a general, for example, in common amenities
22 1.5 points for having at least a 15 SEER air conditioner,
23 and that's above the minimum standards. But maybe you
24 should consider having variable points so the more
25 efficient air conditioning or multi-speed air

1 conditioning you have, the more points you could
2 potentially get. But you also want to make sure it's
3 actually sized correctly. In other words, we don't want
4 to be building too much air conditioning for what's
5 needed, so making sure that people follow the Manual J
6 requirements, all that stuff, I think could be important.

7 I don't know that I'm asking to make changes
8 now but I'm just sort of warning you that or letting you
9 know that I think comments will be coming on those
10 specific issues.

11 And then you do have a good section on green
12 building and I noted that you increased points, I think,
13 from two to four points for green building. I will say
14 there are some other standards out there in addition to
15 the three you have that I've seen other states have
16 adopted, so these would include both sort of Passive
17 House Institute or Passive House Institute U.S., but also
18 there is a green construction standard where ASHRAE and
19 ICC have come together and created a green construction
20 standard. They keep promising the 2018 one is going to
21 come out, they've been promising it for a year, but I've
22 been told it's coming out really soon, so you may want to
23 add some of these additional potential green building
24 standards that people can get certified to help drive
25 that.

1 And I'll stop there but I've got specific
2 comments but I'll probably wait.

3 MR. VASQUEZ: And other ideas as we step this
4 section of our rules in place, a lot of this information
5 there could be a home for it in the handbook. Right?
6 I'm just suggesting if you could pass this information on
7 to staff, it doesn't hurt to reemphasize here are the
8 state standards. At this moment I don't know if we're
9 going to be adding specific requirements or complexity.
10 One of our goals of the Board is to de-complexify

11 MR. REED: De-complexify. So this is a general
12 comment, and again, I'm coming at this as somewhat of an
13 outsider. I think this rulemaking, it would be really
14 helpful at the beginning of the major sections to have a
15 paragraph that -- because this has changed over time --
16 that says, you know, for this section the minimum points
17 you have to get is X and the maximum is Y, and here's how
18 it's rated. I've seen other states' QAP where it's a lot
19 easier, frankly, to read because they have a table of
20 contents at the beginning of the major sections, they
21 have something that just spells it out in black and
22 white. Because really in this QAP you really have to
23 kind of read through it all to figure out what's going
24 on. I don't know if you can get it done for tomorrow,
25 but I don't think that's a major change in the substance.

1 And I can provide some examples from other states where
2 they've done a really good job of just at the beginning
3 saying here's the minimum, here's the maximum and here
4 are the categories, and then it goes into the detail. I
5 think that would be helpful, as an outrider.

6 MR. VASQUEZ: Thank you.

7 MR. JIMENEZ: Real quickly, Demetrio Jimenez
8 with Tropicana Properties out in El Paso.

9 Speaking of the 15 SEER HVAC, in El Paso we're
10 in a hot arid climate, we use a lot of evaporative
11 cooling, especially in our units. I'd like to see that
12 be included. In years past they used to have evaporative
13 cooling coupled with this point item, I can't say when
14 but it was certainly included, but we'd like to include
15 that again.

16 MR. VASQUEZ: And does anyone know when that
17 was dropped? He makes a good point, there's different
18 areas, El Paso is not Houston, but it's hot in both
19 places.

20 MR. JIMENEZ: Thank you.

21 MR. VASQUEZ: Please proceed.

22 MS. HOLLOWAY: Okay. As I mentioned, the
23 accessibility requirements have been modified. I'm
24 almost done. The administrative deficiency section has
25 been modified and we're just now calling it the

1 deficiency process. This is in Subchapter C under number
2 (7). You'll remember that I mentioned that we better
3 described material deficiencies, and what this section
4 now does is describe both an administrative deficiency
5 process and a material deficiency process.

6 We have added on 11.202, also in Subchapter C,
7 another item describing ineligible applicants. It is an
8 applicant who fails to disclose a voluntary compliance
9 agreement with another government agency.

10 Going to Subchapter E, 11.902, we've made some
11 modifications here in order to better match statute.
12 This appeals process in 11.902 is only available to
13 applicants for competitive housing tax credits. The
14 appeals process, which is largely the same for bond
15 applications or direct loan applications, would follow
16 1.7 in the administrative section of the Department's
17 rules.

18 Also in the appeals section we have added
19 language that says that an appeal may not present or
20 refer to any document, instrument or writing not already
21 contained within the application as reflected in the
22 Department's records. In other words, an application may
23 not be supplemented via appeal.

24 MR. VASQUEZ: On that last point, is there any
25 allowance for clarifying information versus new

1 information?

2 MS. HOLLOWAY: Absolutely. And what we're
3 trying to get to here is that when someone submits and
4 appeal or comes and speaks to you as the Board, they may
5 not present information that no one has seen before.
6 They absolutely can clarify something that we already
7 have, or something that follows through that deficiency
8 process, but they may not bring in something completely
9 new. That's actually statutory, in statute that
10 applications may not be submitted without a request from
11 the Department.

12 MR. VASQUEZ: Okay. So if we're requesting.

13 MS. HOLLOWAY: If we're requesting the
14 information, absolutely.

15 MR. VASQUEZ: Okay. I just wanted to make sure
16 that we're not excluding that option for new data.

17 MR. IRVINE: Actually what we're doing is we're
18 emphasizing a statutory requirement here, and this is in
19 the appeals section at 6715 and it says that an appeal
20 has got to be based on the original application and
21 additional documentation filed with the original
22 application. So responses to administrative deficiencies
23 or deficiencies in general basically are the one
24 permitted way that you can augment that application, but
25 you can't just come in at your appeal and say here's a

1 whole bunch of new stuff for the Board to look at.

2 MR. VASQUEZ: Okay. Thank you.

3 MS. HOLLOWAY: I have nothing more.

4 MR. VASQUEZ: Very well done.

5 Is there any other member of the public that
6 wants to bring up another point about this subject, about
7 the QAP?

8 MS. MARTIN: Audrey Martin with Purple Martin
9 Real Estate, and I'm also the QAP Committee chair for
10 TAAHP.

11 And I just wanted to briefly thank staff for
12 all the work getting to this point, and to the Board
13 committee for giving us all the opportunity to have this
14 discussion. I think it's been a fruitful back and forth
15 this year and I think the rules are in a great spot.

16 MR. VASQUEZ: Great. Thank you.

17 Zachary.

18 MR. KROCHTENGEL: You know my name now, that's
19 exciting.

20 MR. VASQUEZ: You're on the list.

21 (General laughter.)

22 MR. KROCHTENGEL: Yeah, right.

23 So this is a suggestion I made a couple of
24 times and it kind of goes back to -- it encompasses a few
25 things, it encompasses tiebreakers as well as the two-

1 mile same year rule, and that is that in two regions in
2 particular -- but it also actually affected Region 6
3 Urban this year, but in Region 11 Urban and in Region 4
4 Rural, on many occasions there are projects that are
5 awarded in the same census tract and that is because they
6 tie on every tiebreaker and then they get down to
7 distance and they're first and second in distance. And
8 because the two-mile same year rule does not apply to
9 those areas, you get a place like Whitehouse, Texas that
10 gets two deals, you get a place like Lindale, Texas that
11 gets two deals, you get a CDP like North Midway that gets
12 two deals, you get another CDP called Olmito that gets
13 two deals, and it ends up really just putting housing
14 right next to each other in that same census tract.

15 If you go to Lindale, Texas there's two 80-unit
16 deals that can see each other from the same year because
17 the tiebreaker and the scoring doesn't in any way
18 differentiate two deals in the same census tract. In
19 Region 6 Urban this year, three deals directly next to
20 each other were awarded because of that flat scoring that
21 is occurring.

22 And my initial suggestion at a roundtable was
23 to in some way score one deal in each census tract one
24 point higher by awarding it the deal in that census tract
25 closest to a grocery store or whatever amenity that we

1 want to call it would get one point automatically. So if
2 you're the only person in that census tract you get one
3 point, if there's two deals in that census tract, one
4 deal gets one point, one deal does not. And that would
5 actually, in my opinion, take deals and say, okay, one
6 deal in this census tract, one deal in the next census
7 tract, one deal in the next census tract, as opposed to
8 two in census tract A, two in census tract B, and then
9 the allocation has run out.

10 So that's something that I suggested as a
11 concept. I think a few other people in this room
12 probably would like to see something like that that
13 differentiates so that we don't see so many deals in the
14 same census tract, specifically in those two subregions,
15 but also, I think that is a problem that could continue
16 depending on how keep the scoring.

17 MR. VASQUEZ: I agree with you that's something
18 we need to address. It's not going to happen in this
19 round, but I agree we've got to look at that.

20 MR. KROCHTENGEL: Thank you.

21 MR. VASQUEZ: Thanks.

22 Brooke.

23 MS. BOSTON: Just to make sure we've got the
24 interests of you guys written down and everything and
25 prepared for tomorrow -- I know you'll be there, I know

1 you won't -- so I have that we are going to include and
2 address the staff's revisions, we are going to address
3 the tiebreakers as discussed. Relating to the search of
4 the records we're going to go back to the prior version
5 but with a certification that tracks the statute and the
6 language about maintaining evidence and moving things
7 back to the manual. Relating to proximity to urban core,
8 we are going to make a revision relating to the 750- and
9 four miles. And then we were going to adjust the base
10 for rehab that Marni had just mentioned in conversation
11 with Tracey.

12 I did want to ask so you're okay if we add
13 language relating to an evaporative cooler? It sounded
14 like you were fine with that.

15 MR. VASQUEZ: Yes.

16 MS. BOSTON: So for all of those for the
17 meeting tomorrow, whichever will help you, we'll either
18 have a handout for something or we'll be prepared to read
19 language in if it was pretty straightforward. Does that
20 sound sufficient?

21 MR. BRADEN: Sure. Actually, if we don't have
22 a handout, if you could send me an outline or just give
23 me notes as to what we're doing because I'll probably
24 have to outline it.

25 MS. BOSTON: Okay. We'll do that. Thank you.

1 MR. VASQUEZ: Very good.

2 Again, I want to thank everyone for their input
3 but really want to applaud our team here that's put in
4 great effort and just balancing all kinds of different
5 issues and pulls from different directions, so you've
6 done a great job yet again, and thank you for your
7 efforts.

8 (Applause.)

9 MR. VASQUEZ: And with that, since we've been
10 sitting here for over about two hours now, let's take a
11 ten-minute break and recess until, I guess, 2:45.

12 (Whereupon, a brief recess was taken.)

13 MR. VASQUEZ: Let's call the meeting back to
14 order. We're losing our crowd.

15 MR. SINNOTT: I'll be brief. Good afternoon,
16 Chairman Vasquez, Mr. Braden. My name is Andrew Sinnott,
17 Multifamily Loan Programs administrator.

18 I'm here presenting the draft Multifamily
19 Direct Loan Rule for 2019. Most of the changes from this
20 year's rule to the draft 2019 rule are clarifications, so
21 I'm just going to touch on the more substantive changes
22 that we're making this year.

23 We added a definition of surplus cash flow in
24 13.2(12) to provide borrowers and the Department with a
25 specific calculation of surplus cash flow when the

1 Department's loan is converted to an FHA insured first
2 lien loan. The motivation for providing this rule is so
3 that borrowers, FHA lenders and the Department can have
4 certainty when modeling and underwriting the transactions
5 that contemplate direct loan funding. And I'll just go
6 through these just a few bullet points and I'll wait for
7 public comment at the end, if there's any.

8 We added pre-development and preservation as
9 activities that may be reimbursed with direct loan funds
10 in 13.3(d) to better align with statute in Texas
11 Government Code 25.6 and Federal Regulations in CFR 92.

12 We added less stringent market analysis
13 requirements for rehab deals that request direct loan
14 funds as the only Department source in 13.5, so long as
15 they can show that the property is at greater than 80
16 percent occupancy for the most recent six-month period.

17 We made explicit the Department's
18 prioritization of fund sources when more than one source
19 is available to award within a set-aside also in 13.5.

20 We also made explicit in 13.5(f) what year's
21 rules will apply to applications and awards that span
22 more than one year's rules from the time of application
23 submission to the time of loan closing.

24 We deleted the interest rate specified in
25 13.8(a), opting to publish it in the NOFA rather than in

1 the rule.

2 We deleted the 20 percent owner equity
3 requirement for direct loan only deals in 13.8.

4 We added 13.10(e) which addresses applications
5 with direct loan funds that elect income averaging for
6 tax credit purposes.

7 We accelerated the time in which direct loan
8 awardees must submit environmental review to the
9 Department and execute a contract in 13.11 in order to
10 make a commitment deadline risk that comes with our HOME
11 and NHCF funds, and we deleted the closing deadline
12 requirement that the Board establishes in 13.11 since
13 there was already a closing deadline requirement within
14 that part of the rule.

15 MR. VASQUEZ: Andrew, let me interrupt for a
16 second.

17 MR. SINNOTT: Sure.

18 MR. VASQUEZ: Why did you delete the 20 percent
19 equity?

20 MR. SINNOTT: I think it's mostly because we
21 allow applicants the ability to mitigate our risk through
22 loan to value in an appraisal, so we have no more than 80
23 percent LTV when the direct loan is the only source of
24 Department funding, and 20 percent owner equity
25 requirement when the direct loan is the only source of

1 Department funding. So we've allowed a few applicants to
2 move forward with just the no greater than 80 percent LTV
3 without providing 20 percent owner equity, so I think
4 that was the motivation behind that change, but if we
5 wanted to keep in some modicum.

6 MR. VASQUEZ: Is there a minimum owner equity
7 at least?

8 MR. SINNOTT: Right now it's at 20, but as the
9 draft rule is now, no, there's not. The vast majority of
10 the direct loan deals that we do are layered with tax
11 credits, either 4 percent or 9 percent, mostly 9 percent.

12 It's very, very few that we come across that are direct
13 loan only, and the ones that we have done in the past
14 several years there has been some owner equity even if
15 they weren't able to meet that 20 percent.

16 MR. VASQUEZ: But if we struck this as is,
17 theoretically there could be zero percent owner equity.

18 MR. SINNOTT: Potentially, yes.

19 MR. VASQUEZ: It could be all loan.

20 MR. SINNOTT: Correct. We have some guarantee
21 language as well, I think that's also in 13.8.

22 MR. IRVINE: Our principal risk is that there
23 is failure to perform the entirety of the contract and
24 that HUD requires repayment as a result, and we are
25 proposing in these rules that the principal, the

1 individual who's behind the single asset entity,
2 guarantee performance of the HUD contract, not repayment
3 of loan but performance of the HUD contract.

4 MR. VASQUEZ: I guess I'm looking for the
5 compelling reason to not have an equity component in the
6 project if we're loaning someone money. I mean, I would
7 love to have that kind of loan.

8 MR. SINNOTT: Like I said, the vast majority of
9 our deals are tax credit layered, but I don't think staff
10 would be opposed to keeping some modicum of equity
11 conditioned to the guarantee that Tim referenced.

12 MR. BRADEN: Arguably, if there's 80 percent
13 LTV, there's 20 percent equity in it.

14 MR. SINNOTT: Or potentially another soft
15 source of funding.

16 MR. VASQUEZ: You can inflate the value and
17 suddenly you have this magic equity on a just purely LTV
18 basis.

19 MR. SINNOTT: The 80 percent is based on for
20 new construction it's the as completed appraised value,
21 if it's rehab and they meet the 80 percent LTV as is,
22 they can move forward with that, but if not then they'd
23 be as rehabbed value that reflected no more than 80
24 percent LTV.

25 MR. BRADEN: I'm okay if you want to say 10

1 percent.

2 MR. VASQUEZ: Do we have public comment on
3 this?

4 MR. LUCAS: I'm Ray Lucas with Lucas and
5 Associates, and I have dealt with some community-based
6 nonprofits that have good properties and they just needed
7 your direct loan fund to do rehab to bring it up to a
8 higher standard, and it's been tough for them to do the
9 80 percent loan to value and then come up with 20 percent
10 equity on top of all that to make it work. So it would
11 be beneficial for some of those that are utilizing the
12 program in that respect. We've done a number of them,
13 four or five of them.

14 So just food for thought. By the time Andrew
15 gets done with them, they're pretty much chained to a
16 fence anyway.

17 (General laughter.)

18 MR. BRADEN: And maybe Andrew or Tim can flesh
19 out a little bit how the HUD guarantee is going to work,
20 the guarantee of the HUD obligation.

21 MR. IRVINE: Simply put, if there were a
22 failure to fulfill the HUD affordability requirements and
23 as a result HUD made demand upon the agency to reimburse
24 them the funds, then we would look to the guarantor for
25 that reimbursement.

1 MR. BRADEN: So without HUD making a demand on
2 us, there's still some risk associated with our funds,
3 but the bigger risk is if the federal government comes
4 knocking and says give us our money back.

5 MR. IRVINE: Exactly.

6 MR. BRADEN: And that's a personal guarantee?

7 MR. IRVINE: A personal guarantee from a live
8 individual or their estate.

9 MR. VASQUEZ: Do we have the ability to count
10 other sources of contributions towards that equity? I
11 have real heartburn with totally removing it, even if it
12 is a nonprofit. I mean, a borrower is much more
13 incentivized to make some --

14 MR. IRVINE: As a government entity, we have a
15 hard time getting into an analysis of a borrower's
16 balance sheet to determine what their true equity
17 position is. I mean, there are things that we could say,
18 yes, it clearly counts as equity if you have unencumbered
19 assets that are readily liquidatable, or whatever, but
20 that's different from actually investing in the
21 development entity cash equity that it can then use for
22 whatever liquidity needs it has. And we find that really
23 the folks that we're dealing with generally don't have
24 the wherewithal to put that kind of investment into their
25 entities.

1 MR. BRADEN: And have we discovered -- Mr.
2 Lucas just made a comment that it would be helpful to
3 nonprofits he's involved with. Have we come across other
4 applicants who are nonprofits who are having problems
5 putting in the 20 percent?

6 MR. IRVINE: I'm aware of at least one.

7 MR. BRADEN: And this is only if the loan is
8 the only source of borrowing associated with the
9 transaction.

10 MR. IRVINE: Right. When they're layered we
11 have other more significant protections.

12 MR. VASQUEZ: And I imagine the other groups
13 are demanding that there's some equity in there.

14 You just mentioned a 10 percent figure. I just
15 have a problem eliminating it altogether. I have a
16 problem going under 15.

17 MR. BRADEN: I mean, some of the concept that
18 you're struggling with, I think, sweat equity or
19 something else is picked up by the 80 percent. Right?
20 The reason there's 80 percent LTV is somebody has either
21 bought right or they're putting something else into it.

22 MR. IRVINE: The 80 percent LTV is based on
23 assumptions that the appraiser has given that it's an as-
24 built in this manner with these rent restrictions and
25 what's it worth.

1 MR. VASQUEZ: Would staff have a problem with
2 instead of deleting it all changing it to provide an
3 amount not less than 10 percent of the total housing
4 development cost?

5 MR. IRVINE: I don't really have a problem with
6 changing the number of whatever. To me, if you're going
7 to go down that road, another way you could approach it
8 would be to flesh out the criteria for obtaining approval
9 to use a lower equity number and not just arbitrarily
10 moving the number down but say, for example, upon showing
11 good reasons, adequate protections and so forth -- that I
12 could probably flesh out in a couple of hours -- that
13 there is an ability to have a reduced equity requirement.

14 MR. VASQUEZ: Are we allowed to distinguish
15 between for-profit and nonprofit developers?

16 MR. IRVINE: I don't know why you couldn't.

17 MR. VASQUEZ: I don't know if there's some sort
18 of discriminating between free enterprise.

19 Mr. Lucas has another comment.

20 MR. LUCAS: Ray Lucas, one more comment.

21 The projects I work on have Project-Based
22 Section 8 contracts. That might be a consideration that
23 is lowering the risk to the Department, that one
24 criteria.

25 MR. PHILIP: Sunny Philip. I represent a

1 nonprofit from South Texas.

2 And the point we want to raise, especially in
3 regions where the rent levels are so low, those kind of
4 assistance are needed. And also, if you compare the HOME
5 program on the single family side, there's a lot of money
6 going to one single family for the construction and
7 there's no payment back out there. In this case if you
8 are helping, let's say, 20 different families, the
9 benefit of home improvement, the only thing is they're
10 not homeowners and they cannot afford, they're not
11 eligible. So it is mainly a problem,
12 especially for the nonprofits, a difficult situation to
13 come up with the liquidity and still feel that you
14 balance out and the affordability is maintained also.

15 MR. VASQUEZ: Right.

16 MS. PHILIP: Any questions?

17 MR. VASQUEZ: No. Thank you for your comment.

18 MR. BRADEN: Andrew, do we have a feel for when
19 these applications come to us are most of them
20 nonprofits?

21 MR. SINNOTT: The direct loan only deals, I'm
22 trying to think of the most recent ones, the last, I'd
23 say, 70 to 80 percent of them have been nonprofit
24 developers.

25 MR. BRADEN: And the for-profit developers do

1 not have a problem coming up with the 20 percent?

2 MR. SINNOTT: So this rule has only been around
3 since, I think, last year, I think 2017, I can't remember
4 if was around 2017, but it's a fairly recent addition to
5 the rule, and I don't know if we've ever come across a
6 for-profit entity requesting direct loan as the only
7 source of Department funds yet.

8 MR. BRADEN: I'd be okay if you want to say
9 yes, let's get rid of the 20 percent requirement for
10 nonprofits, if you want to leave it in place with respect
11 to for-profits.

12 MR. VASQUEZ: If we can legally do that. I
13 would think lowering it for nonprofits. I just still
14 have trouble eliminating it altogether. If a nonprofit
15 doesn't have some fundraising in a certain project,
16 perhaps they're not stable enough and viable enough to be
17 doing the whole project in the first place. Being able
18 to have some skin in the game just as an indication that
19 there's some viability to the organization to actually
20 pull it off, in my opinion.

21 MR. SINNOTT: We also have -- this has been in
22 the rule for several years now -- if the direct loan
23 amounts to more than 50 percent of the total housing
24 development cost, except for those financed through the
25 USDA 515 program, the application must include a letter

1 from a third party CPA verifying the capacity of the
2 applicant developer or development owner to provide at
3 least 10 percent of the total housing development cost as
4 a short term loan, or evidence of a line of credit or
5 equivalent tool equal to at least 10 percent of the total
6 housing development cost from a financial institution
7 that is available for use during the proposed development
8 activities. So that kind of catches some of those
9 potential direct loan only folks as well to the extent
10 that the direct loan is more than 50 percent of the total
11 housing. So it's a smaller deal, I can't imagine
12 anything more than 40 or 50 units, total development cost
13 of \$6- or \$7 million.

14 MR. VASQUEZ: Are you okay with only 10 percent
15 for nonprofits?

16 MR. BRADEN: I'm actually okay with deleting it
17 altogether, so I'm not saying let's just get rid of it
18 for nonprofits, I'm kind of backing off with my original
19 position.

20 MR. VASQUEZ: Ten percent across the board?

21 MR. BRADEN: I'm okay with that, I guess, if we
22 just drop it to 10 percent, but I mean, Tim is right,
23 we're just sort of arbitrarily picking that number.

24 MR. VASQUEZ: Well, 20 percent equity is more
25 of a standard financial world number.

1 MR. IRVINE: I'm probably giving myself a task
2 I don't want, but I would recommend that there be a
3 provision that the applicant may request a lower equity
4 requirement and they are required to substantiate what
5 their equity position would be and why it adequately
6 mitigates the risks of covering costs during
7 construction.

8 MR. BRADEN: You're proposing a rewrite that
9 does that? I'm okay with that. That's not a Board
10 decision, maybe the executive director can make it too.

11 MR. VASQUEZ: I'm good with that. I just hate
12 to eliminate this provision altogether, even though there
13 may be some other -- given that other part that you read,
14 there may be some conflict.

15 MR. IRVINE: The real challenge is during
16 construction where you encounter cash flow issues and so
17 forth and you've got to say, hey, we just need to do this
18 right now to keep this thing on track and we need equity
19 to do it.

20 MR. VASQUEZ: Exactly. And something is always
21 going to go wrong somewhere down the road.

22 MR. IRVINE: For example, a line of credit from
23 a prime contractor would suffice.

24 MR. VASQUEZ: Actually, I think we'd recommend
25 if we could put together language subject to the

1 direction that Mr. Irvine just outlined, it would be
2 looked upon favorably.

3 MR. ECCLES: And just one quick clarification
4 on that. Would that be drawing a distinction between
5 for-profits and nonprofits? No? Okay. Thank you.

6 MR. VASQUEZ: Okay. Sorry for the
7 interruption, Andrew. Continue on.

8 MR. SINNOTT: That's okay. Actually the last
9 bullet I had was deleting a closing deadline requirement
10 established by the Board, so that was the last thing I
11 had. So other than that, mostly just clarifications and
12 then obviously the references to Chapter 10 have now
13 become references to Chapter 11.

14 MR. VASQUEZ: Anyone else have any comments
15 that they'd like to add to this subject?

16 (No response.)

17 MR. VASQUEZ: Great. Thank you, Andrew.

18 And moving right along to the Asset Management
19 Division.

20 MR. BANUELOS: Good afternoon. I'm Rosalio
21 Banuelos, the acting director of Multifamily Asset
22 Management, and I'm here for item 3 which is the
23 presentation and discussion regarding post-award and
24 asset management rules, 10 TAC Chapter 10, Subchapter E.

25 For this one we're updating the materials, it's

1 not a repeal. Several of the changes that are being
2 proposed are for clarification and some of the changes
3 are for consistency with other sections of the rules, so
4 I won't go into the details of those changes, and will
5 focus on the most notable changes which are in the
6 sections for amendments, owner transfers and the right of
7 first refusal which are 10.405, 10.406 and 10.407 of the
8 rules.

9 Under the section for amendments to the housing
10 tax credit application and amendments to the LURA in
11 Section 10.405, staff proposes the addition of an item to
12 allow amendment requests to implement a revised minimum
13 set-aside election mainly for income averaging a
14 permitted by amended Section 42(g)(1) of the Internal
15 Revenue Code, as adopted by the Federal Consolidated
16 Appropriations Act of 2018. This would be a material
17 amendment requiring Board approval for both the
18 application amendment and the amendment to the LURA.

19 For the ownership transfers which in 10.406(e),
20 staff has suggested that the executive director be given
21 the authority to approve transfers prior to the issuance
22 of IRS Forms 8609 or completion of construction rather
23 than these transfers having to go before the Board for
24 decision making. This would allow the transfers to be
25 approved more quickly and efficiently.

1 And then the third item that I want to point
2 out is in the right of first refusal offer price 10.407.

3 Staff suggests adding language to clarify the operation
4 of the right of first refusal process as set forth in
5 statute, particularly for developments that have a
6 minimum purchase price. The proposed changes to the
7 right of first refusal are intended to implement what
8 staff believes is the most reasonable reading of statute
9 which is that a minimum sales price, as stated in Section
10 42(I)(7) is only a sales price that if not met would
11 trigger tax consequences and that negotiations for a
12 higher price and ultimately a higher sales price are
13 allowed for the ones that have a minimum purchase price.

14 Other than that, it's mainly clarification and
15 consistency with other sections of the rule, so that's
16 all I have.

17 MR. VASQUEZ: Anyone have any comments? Ms.
18 Bast has a comment.

19 MS. BAST: Thank you very much. Cynthia Bast.

20 I have just a couple of things. First of all,
21 in the ownership transfer section, this relates to
22 Section 10.406(f), and is an issue that I know I've been
23 talking about with several members of staff for a few
24 years now.

25 Under Section 42 it says that if credits are

1 awarded in the nonprofit set-aside that the nonprofit
2 must participate throughout the compliance period, the 15
3 years. The way our rule is currently written, if a
4 property was in the nonprofit set-aside, then that
5 nonprofit can never come out while the LURA is in effect,
6 or if it does come out, it has to be replaced with
7 another nonprofit.

8 A few years ago we recognized that same sort of
9 stranglehold on HUBs and allowed HUBs some flexibility to
10 leave an ownership structure on their own volition if
11 they felt they had gotten the benefit of participating in
12 the development and were ready to move on. I think it
13 could be beneficial to allow that for nonprofits as well,
14 so long as the federal requirement that there's been a
15 nonprofit for the compliance period is met. So that is
16 perhaps a new concept that I would like to throw out
17 there for consideration.

18 And also, keep in mind if a nonprofit is
19 involved and it wasn't in the nonprofit set-aside, they
20 can freely go out, it's just these that were in the
21 nonprofit set-aside that the ownership is kind of locked
22 for the 30 or 40 years of the LURA.

23 MR. VASQUEZ: So you're talking of being able
24 to replace the nonprofit?

25 MS. BAST: I'm talking about a nonprofit being

1 able to leave and if it's after the compliance period you
2 don't necessarily have to put another nonprofit in
3 because it's not required by federal law, and it allows
4 some flexibility for year 15 transfers for preservation
5 and things like that.

6 MR. VASQUEZ: Has this been a change that's
7 been considered in the past?

8 MS. BAST: I know I've brought it up in public
9 comment in the past.

10 MR. BANUELOS: Just to clarify, so nonprofits
11 are usually required to be in the ownership structure
12 throughout the compliance period, so that's generally 15
13 years. Some properties may have elected to extend the
14 compliance period beyond the 15-year period, so that
15 would be, I guess, the instance that you are referring
16 to?

17 MS. BAST: No, that's not the instance I'm
18 referring to. What I'm referring to is in 10.406(f)
19 there's some language that says if you're replacing a
20 nonprofit, you must have a replacement nonprofit, but if
21 the development received tax credits pursuant to the set-
22 aside, then the transferee has to be a qualified non-
23 profit, but otherwise you can change it out. So there's
24 this phrase in here that's been in here for a few years
25 about the set-aside that causes this problem.

1 And I know Raquel and I have talked about it
2 and I know you haven't had the benefit of that, and I'm
3 sorry for that, but it's an issue that I've tried to
4 address for a few years.

5 I can make a suggested modification, I can
6 bring it up tomorrow, I can do whatever you would like
7 there.

8 The second thing that I would like to bring up
9 is in the right of first refusal. First of all, I would
10 like to say that since the change of law in 2015 and
11 since staff has worked very hard to have rules to
12 implement that change of law, I've seen a tremendous
13 benefit to the ownership transfer process. I have seen
14 dozens and dozens of properties that get to year 15 and
15 are changing hands and are going to nonprofits where
16 there's typically a CHDO involved, so I think that in
17 many respects this is working as the change in law
18 intended, and also working toward the intent of having
19 that nonprofit long term ownership. I think things are
20 working well there.

21 There are two things. One is a change in the
22 rule that was made in 10.407(c)(9). It says that if you
23 have a physical conditions report, which you have to
24 submit to go through the right of first refusal process,
25 and if there are conditions there that are problematic

1 that they must be satisfied before going through the
2 right of first refusal process. Well, sometimes the
3 change of ownership will bring with it -- most times will
4 bring with it new financing and that's the financing that
5 is going to make those modifications and fixes. Perhaps
6 part of the reason the owner is selling it is because
7 they don't have the wherewithal to make some of these
8 fixes but this new owner will come in and fix it. So if
9 there are those kind of problems, where it says that the
10 physical conditions must be resolved, I'd like that
11 resolution to include the ability for the new owner to
12 have a plan as part of acquiring the right of first
13 refusal.

14 MR. BANUELOS: So I think the concern there is
15 we have it particularly for habitability and tenant
16 safety, so we were thinking more critical repairs being
17 taken care of. Is that something that could be kept in
18 there just for that reason rather than waiting until the
19 property changes hands and then fixing those items that
20 are critical to the tenants before then?

21 MS. BAST: I think that's a legitimate concern,
22 and perhaps the rule as it is written will work in that
23 it uses the word "resolved" and that is open enough to
24 allow you to determine what resolves it, whether it be
25 that no, this has to be fixed right now, or we would

1 accept that it can be fixed in the refinance.

2 MR. BANUELOS: Right. So just in the past my
3 understanding is that if we had a physical condition
4 inspection of the property and the items have been
5 corrected as a result of that inspection, then we would
6 take that as evidence that the items have been corrected.
7 So it doesn't necessarily have to be spelled out in the
8 PCA or a subsequent report done to show that that item
9 has been addressed.

10 MR. VASQUEZ: But I think you're saying you
11 want to be able to have the transfer done and that the
12 new owner could implement the habitability and tenant
13 safety measures.

14 MS. BAST: I can understand your position that
15 if it's an immediate tenant safety issue you don't
16 necessarily want to wait 60, 90, 180 days, but if there's
17 some that could be part of the subsequent owner's
18 refinancing, then I would just ask if there could be
19 flexibility in that interpretation.

20 MR. BRADEN: I think that's a reasonable
21 position to take, especially when it's safety and
22 habitability. So we're in agreement. Right?

23 MS. BAST: I think so.

24 MR. VASQUEZ: Although, the way I read this
25 language it's saying the identified repairs/replacements

1 must be resolved to the satisfaction of the Department
2 before the development will be considered eligible to
3 proceed with the right of first refusal request.

4 MR. BRADEN: I think Cynthia just made the
5 point of what resolve means. It's a contractual
6 commitment to address that resolution. We're the ones
7 interpreting the rules.

8 MS. BAST: I thought that was my job.

9 (General laughter.)

10 MR. IRVINE: I would just comment, if it's a
11 matter of imminent health and safety, it's got to be
12 fixed, generally speaking, immediately, in 24 hours, you
13 know, boom. So I just think this is, frankly, a non-
14 issue. Whoever is legally the owner is responsible for
15 doing that and if somebody else wants to pursue an
16 acquisition, they're probably going to step up and say
17 let us help you fix that right away because if we were to
18 have it on our responsibility right now, we would have to
19 fix it immediately. So either way it's got to be fixed
20 right away.

21 MS. BAST: All right. Last comment on right of
22 first refusal. In your writeup the staff is talking
23 about the sequential negotiation, particularly in the
24 180-day exclusive period. We've got the 60 days priority
25 for certain kinds of entities and then 60 days for others

1 and then others. And in the staff writeup it says: If
2 at the end of the sequential exclusive negotiation
3 periods the seller has not negotiated an acceptable
4 transaction, it should be free to negotiate with others,
5 but it seems that before finalizing any such agreement
6 the offering party ought to give the unsuccessful
7 priority negotiation parties an opportunity to meet those
8 terms, thereby giving effect to the reference within the
9 statute to the right of first refusal.

10 I agree but I don't think that the rule, as
11 currently written, implements that. What the rule does
12 is it establishes here's how you satisfy the ROFR, if
13 you're going through the ROFR, here's how you satisfy it,
14 here's what you can do after you satisfy it, here's what
15 happens if you don't satisfy it. And what it says right
16 now is unless you take one of the offers that you've
17 received, you don't satisfy it, and that's not consistent
18 with what staff says right here which is that if you
19 don't get to the end of your negotiations successfully,
20 you can sell to someone else but not unless you offer it
21 for a match to those prior parties.

22 So once again, I took a stab at writing that
23 last piece of insert into the rule that would accommodate
24 this sentence in your staff recommendation, and I have
25 submitted that to Mr. Irvine and Mr. Eccles, and am happy

1 to discuss it further. But basically what it does is it
2 says if you get to the end and you've negotiated as you
3 were supposed to but you didn't get to a contract with
4 anybody, then you can sell to somebody else but not
5 unless you take whatever that offer is that you have from
6 that other person and you go back to those prior parties
7 and say, okay, one more shot, here's what I've got, match
8 this, and if you don't match this, then you can go
9 forward.

10 I think that's what this sentence says and so
11 I was just trying to make the rule match what the
12 recommendation says.

13 MR. VASQUEZ: But in practice, in reality
14 during this kind of process, would not the seller already
15 have been continuing in conversations with the earlier
16 bidders as you're negotiating?

17 MS. BAST: I certainly think it's possible.

18 MR. VASQUEZ: Well, it seems likely that you're
19 keeping open all lines of communication with everybody
20 and as you're getting a different deal, you're presenting
21 it to someone else saying, hey, here's this deal.

22 MS. BAST: Tim has a point which is that in the
23 various tranches of time the language, I believe, talks
24 about exclusive negotiations with certain priority
25 participants, so if this group's time is gone and you're

1 on to this group, I'm not sure that this rule currently
2 would allow you to go back to this group. Now,
3 practically does that happen? It very well may. We have
4 a situation we worked through where they didn't get there
5 during the first 60 days but then someone came in on the
6 second 60 days with an offer that they did like that they
7 could negotiate, and they did go back to that CHDO and
8 said, Here's the offer that we like, do you want to match
9 it? And they didn't, so they went with that second
10 offer.

11 MR. VASQUEZ: I'm not convinced or I'm not
12 compelled to see why we should add this extra language.
13 What I'm saying in reality it's probably going to happen
14 anyway and if anyone in that first group really wants the
15 property, I mean, they're going to continue the
16 conversation. Why add additional complexity?

17 MS. BAST: The reason why I would say that is
18 because over the years I have worked with the right of
19 first refusal there are a number of nonprofits who feel
20 very strongly about this provision and who feel that they
21 need to be given every opportunity to acquire these
22 properties. So this statement that I'm making and this
23 suggestion that I'm making is really kind of in response
24 to that, knowing that there are these nonprofits out
25 there who care very much about this and who believe it's

1 very important for them to have these opportunities. And
2 so as I saw this kind of whole perhaps a little bit of a
3 disconnect between the writeup from your staff and what I
4 saw in the rule, I thought I would try to bring this up
5 and talk to you about it and let you know that it could
6 be a concern for the nonprofits. I know there were some
7 nonprofits in the audience today, and they can speak for
8 themselves, I was just thinking about that.

9 From my perspective, the rule has been working
10 and I'm happy to work with the rule the way it is, I was
11 just trying to bring that thought to bear.

12 MR. BRADEN: I think as a policy reader, she's
13 right. The concept behind the statute is that the
14 nonprofits get the last bite at the apple, so if you've
15 cut a deal all the way through and then at some point
16 before you ink the deal with somebody else you say, okay,
17 here it is. And what's the time frame to make that
18 response to see if someone could match it, and sure match
19 it in terms of terms. Like if one is all cash and
20 somebody walks in with borrowed money, it's not the same.

21 I don't know if Tim or Beau have had a chance
22 to look at Cynthia's language.

23 MR. VASQUEZ: Also, there's one more practical
24 aspect. If you're in the group that has in good faith
25 been negotiating, you're that second group, in that

1 second batch, and you've spent your time and your
2 attorneys to negotiate in good faith and then all of a
3 sudden this other group comes out of the blue, from your
4 perspective, and says I'll match that. And we're putting
5 in language here that says that other group who had the
6 first chance, could have gone through that negotiation,
7 it seems unfair to the group who did work it through.

8 MR. BRADEN: Now, of course, statutorily they
9 had notice that that might happen. Right? They're
10 negotiating with the understanding that somebody else has
11 the right of first refusal, and then that argument sort
12 of goes contrary to whole idea that they're going to be
13 negotiating on the side with the first party.

14 MR. VASQUEZ: After that period has expired
15 that group had that first refusal.

16 MR. BRADEN: I don't know if staff has any
17 thoughts, comments. I don't feel that strongly about it.
18 If we think it works, I'm okay leaving it alone.

19 MR. VASQUEZ: I was going to say I'd recommend
20 leaning towards leaving this one. I understand your
21 argument.

22 MR. IRVINE: Since we're just starting the
23 public comment process, I think the better course is to
24 leave it in and then if we get significant comment saying
25 remove it, then we can consider how the Board would treat

1 it.

2 MR. BRADEN: I think that's right.

3 MR. VASQUEZ: I would agree.

4 Just one clarification. On the 10.406(f) on
5 replacing the nonprofit, did we come to any resolution on
6 that discussion? So this is after the 15 years or after
7 the compliance period.

8 MR. BRADEN: I had a question on that.

9 MR. VASQUEZ: I don't think we had a resolution
10 on that.

11 MR. BRADEN: So on 10.406(f), doesn't (3) under
12 that says exactly what you're asking for, Cynthia?

13 MS. BAST: So this is the problem with (3),
14 exceptions to the above may be made on a case-by-case
15 basis if a development is past its compliance period, was
16 not reported to the IRS as part of the nonprofit set-
17 aside. This is the exact phrase that I'm talking about
18 that's the problem. If we would just take that phrase
19 out, then any transaction with a nonprofit in it, whether
20 or not it was in the nonprofit set-aside, once they get
21 to the end of the compliance period, which could be the
22 state extended compliance period, they can step away
23 because (3) does not apply to any deal that was in the
24 nonprofit set-aside.

25 MR. BRADEN: So this is more directed towards

1 staff. So why is that phrase in there? Do we know?

2 MR. BANUELOS: Again, my understanding was that
3 we were intending to clarify that nonprofits could come
4 out if they were not in nonprofit set-aside. I don't
5 know the history of that section, to be fully honest.

6 MR. BRADEN: Do you think we can run that down?

7 MR. BANUELOS: Yes, we can look into it.

8 MR. BRADEN: I hate striking language if there
9 was a specific reason for it, but I think the logic, if
10 you're past the compliance period, which would include
11 any extension, it seems like you should be able to, and
12 this is even through an exception, so it's not even like
13 it's automatic.

14 MR. BANUELOS: I will look into it, and if it's
15 okay with you, report back on it tomorrow.

16 MR. BRADEN: Sure.

17 MR. VASQUEZ: I'm in agreement. I don't see any
18 reason why after the compliance period you can't change,
19 but maybe there was a reason.

20 MS. BAST: It's the nonprofit's choice.

21 MR. VASQUEZ: If staff could further research
22 that.

23 MR. BANUELOS: Yes.

24 MR. VASQUEZ: Okay. Thank you, Mr. Banuelos.

25 MR. IRVINE: If I might circle back to the 20

1 percent equity, I have some suggested language for you,
2 if I might read it into the record. This assumes that
3 you would leave the 20 percent equity requirement intact
4 but go on to provide:

5 An applicant for direct loan funds may request
6 Board approval to have an equity requirement of less than
7 20 percent. The request must specify a proposed equity
8 that will be provided and provide support for why that
9 reduced level of equity will be sufficient to provide
10 reasonable assurance that such owner will be able to
11 complete construction and stabilization timely. The
12 support case will be reviewed by staff and staff will
13 provide their assessment and recommendation to the Board.

14 The applicant's support should include all mitigating or
15 supporting factors, including, by way of example and not
16 by way of limitation, performance bonds, collateral,
17 lines of credit or inter-creditor agreements. Sweat
18 equity or other forms of equity that cannot be readily
19 accessed will not be allowed to count towards the equity
20 requirement.

21 MR. BRADEN: Sounds okay to me.

22 MR. VASQUEZ: Sounds pretty good.

23 MR. BRADEN: You realize this is coming back to
24 the Board. Right?

25 MR. VASQUEZ: Moving right along to the next

1 item on the agenda regarding migrant labor housing
2 facilities.

3 MR. GOURIS: That's right. Good afternoon, Mr.
4 Vasquez and Mr. Braden. My name is Tom Gouris and I am a
5 director of TDHCA here to discuss the licensing and
6 inspection rules for migrant labor housing facilities.

7 By way of background, migrant labor housing
8 facility licensing is an activity that's unlike the
9 typical program and regulatory activity conducted by the
10 Department in that it doesn't begin with funding by the
11 Department, it's more like a regulatory activity such as
12 a driver's license or a manufactured housing license
13 permit. In Texas before you can provide housing for two
14 or more migrant families or three or more individuals for
15 three or more days as living quarters, you must be
16 licensed by the Department. This is required under
17 Section 2306, Chapter LL.

18 We've been licensing facilities for more than
19 ten years and over the past year we have had 48
20 facilities licensed. The names and addresses of each
21 licensed facility are on our website along with the
22 information about the law, how to get licensed, how to
23 make TDHCA aware of potentially unlicensed facilities,
24 and that website is available in both English and
25 Spanish. Licenses are valid for a one-year period and

1 cost \$250. The actual inspection and processing of the
2 license is currently handled under an agreement through
3 our sister agency the Manufactured Housing Division, and
4 it occurs when the providers of such housing self-
5 identify as wishing to operate such a facility with a
6 license.

7 So our enforcement activity here is not as a
8 result of funding for housing and yet, at the same time,
9 we are not a typical law enforcement agency with
10 resources to patrol streets to find unlicensed
11 facilities. We let people know about the legal
12 requirement for licensing and whenever we are told about
13 unlicensed activity we follow up and try to identify and
14 get them licensed.

15 Last summer it was identified to us that a
16 large segment of the migrant labor population was
17 regulated by the U.S. Department of Labor through the
18 H-2A visa program. This program is administered in the
19 state by the Texas Workforce Commission and requires,
20 among other things, that employers who wish to
21 temporarily employ foreign workers in the U.S. must
22 provide a temporary place for the workers to live. We
23 began to work with our counterparts at the TWC to
24 determine if this activity also needed to be licensed by
25 the Department where it met the three-person, three-day

1 standard, and how we could work together to minimize the
2 duplication of effort and impact to employers.

3 The U.S. Department of Labor uses two standards
4 for inspection of migrant labor facilities: the ETA
5 standard for facilities operation in operation prior to
6 1980, and the OSHA standards for properties beginning
7 with operations after 1980. Our Texas statute that
8 currently exists does not specify a federal standard to
9 use but instead directs the Board to enact a Texas
10 standard for inspection, and that rule which we have in
11 place today dates back to 2005, contains inspection
12 standards that are primarily an amalgamation of the two
13 federal standards, generally using what could be
14 characterized as a more worker-friendly standard where a
15 conflict between the two exists.

16 In order to utilize the inspections TWC is
17 already doing under the H-2A program, we began discussing
18 revisions to our rule to accept the TWC inspection and
19 federal minimum standards that they are using to do their
20 inspections. We received considerable feedback from
21 advocacy groups and a group of interested legislators who
22 expressed compelling concerns with regard to the
23 differences in the two standards and how abandoning our
24 current standards would lessen the housing protections
25 for all migrant workers in housing. They identified a

1 number of instances where the lesser standard would
2 weaken these protections. For example, the ETA standard
3 requires electricity to be available in a housing
4 facility while the OSHA standard only regulates
5 electricity if it's already available at the facility.

6 So the draft rule before you today identifies
7 nine specific inspection standards that are in the
8 current rule, most of which are in one of the other
9 federal standards but not both, and maintains them as
10 part of the Texas standard going forward. This will
11 allow us to minimize the duplication of effort and impact
12 on the employer by accepting the TWC inspection along
13 with a certification from the employer or provider to the
14 nine additional Texas standards. In addition, the new
15 rule proposes to reduce the licensing fee to \$25 for each
16 of the first two years of licensing these Texas providers
17 that are already being inspected by another agency, such
18 as TWC for the H-2A inspections.

19 We've already been reaching out to over 180
20 H-2A employers, grower organizations and consultants who
21 help employers through the H-2A process. Unfortunately,
22 it's become clear to us that the TDHCA licensing
23 requirement was not previously well known among these
24 groups. We will continue to reach out to these groups
25 and soon we will be able to receive copies of application

1 material for the H-2A program directly from TWC and be
2 able to send information about the TDHCA licensing to
3 those employers as they're going through the H-2A
4 approval process.

5 We've also developed a brand and logo for the
6 licensing program. Much thanks goes to Amy Kincheloe, in
7 our communications and marketing group of our Policy and
8 Public Affairs Division, for her extraordinary work and
9 also the significant input on the logo design from our
10 executive director. The new logo, which is in your
11 information packet, looks like this. It is intended to
12 provide a powerful, positive recognition of a licensed
13 facility so that employees will know that a facility is
14 up to standard. It is expected that the logo will also
15 be used by future employers wishing to self-identify that
16 along with employment opportunities they're offering
17 licensed and regulated housing.

18 I'll be glad to answer any questions anyone has
19 about the proposed rule or the licensing and inspection
20 process.

21 MR. VASQUEZ: So, Tom, could you help clarify
22 which are the entities doing these inspections right now?

23 MR. GOURIS: So on our behalf for the 48
24 existing properties we have, our Manufactured Housing
25 Division goes out and will do the inspections, and

1 they've been doing that since the inception of us taking
2 over that requirement. So they actually collect the
3 application, they do the inspection and they issue the
4 license. We have been responsible for the rulemaking and
5 for the policy issues on the subject and taken the brunt
6 of the criticisms from folks when things don't go well,
7 so that's been our role.

8 And so we're trying now to utilize what the TWC
9 does because they do their own inspections for H-2A
10 process, we're trying to utilize those inspections from
11 the H-2A process. Instead of having our guys go out a
12 second time at the same time, use those inspections,
13 along with a certification from the owner or operator
14 that says they meet the other nine standards, and then
15 license them and deal with any consequences of that if we
16 get complaints or what-have-you and we'd go out and
17 inspect then.

18 MR. VASQUEZ: So TWC is also going to these
19 same locations?

20 MR. GOURIS: Well, the 48 properties that have
21 licensed now as far as I can tell are not facilities that
22 also use the H-2A program. The H-2A program is an
23 employer-driven program whereas our facilities that
24 currently exist are historically an owner that became
25 aware of our requirements and got licensed. So in some

1 cases they're gin operators that have nine to twelve
2 months worth of work or have a significant amount of
3 work, or they might be public housing authorities that
4 provide migrant farm worker housing and recognized that
5 they needed to be licensed and so they got licensed by
6 us.

7 MR. VASQUEZ: But they're not necessarily H-2A.

8 MR. GOURIS: That's correct. Our current group
9 is a subset of the whole. The H-2A would probably
10 significantly increase the number of licensees in the
11 state.

12 MR. VASQUEZ: Do you know what the universe is
13 of potential licensees or licensed facilities?

14 MR. GOURIS: Well, I was able to search the
15 federal information -- or actually database, we tried to
16 put a database together, and we had over 400 instances
17 identified of potential employers requesting to be part
18 of the H-2A program. I don't know if all of those
19 received that or not. We were able to, from that list,
20 get email addresses for over 180 employers and then
21 there's also some growers and some consultants who help
22 employers in that group, and we sent to all of those and
23 we've received some feedback, a couple dozen feedback
24 from that. But it's hard to tell, it's going to be in
25 the hundreds most likely.

1 MR. VASQUEZ: And help me out here to
2 understand, so do all H-2A employers also provide
3 housing?

4 MR. GOURIS: H-2A employers are required to
5 provide housing, but not all H-2A housing is required to
6 be licensed. To be licensed it has to three employees
7 for three days, so pretty much it's going to be three
8 days, but three employees, a lot of them will hire one or
9 two employees or have one or two employees and they won't
10 be required to be licensed under the statute.

11 MR. VASQUEZ: Are there any conflicts between
12 our state statutes and the federal requirements?

13 MR. GOURIS: Well, there's potentially one in
14 that the prior requirements are not spelled out, they're
15 referenced in our state statute but they're not spelled
16 out in the federal statute. In addition, there are two
17 federal requirements, like I said, the OSHA and the ETA,
18 and our statute doesn't say you need to do this one or
19 that one or either of them, it just says you need to look
20 at these ten items and anything else that the Board sees
21 fit to include in the requirement.

22 MR. VASQUEZ: Are these duplicative of the
23 federal statutes that are already in place, are they not
24 as much, are they more? I'm just trying to see are we
25 duplicating efforts, confusing the people.

1 MR. GOURIS: So our first attempt at revising
2 these rules was to go just with the federal ETA or OSHA,
3 if applicable, standard, and we received feedback that
4 said, hey, there are some things, like for example,
5 electricity is required under the federal ETA requirement
6 but not under the OSHA requirement, so a property that
7 came into service after 1980 wouldn't necessarily be
8 required to have electricity. It seems like all of our
9 properties should have electricity, let's include that as
10 one of the state's standards. So that's the kind of
11 conflict that exists, the conflict between the federal
12 standards that has been adjudicated through our standards
13 by saying we're going to go to this level based on the
14 public comment that we got on the rule to start with.

15 MR. VASQUEZ: I'm not saying it makes sense.
16 So TWC is currently doing inspections under the federal
17 standards.

18 MR. GOURIS: They are, yes.

19 MR. VASQUEZ: But they're doing some OSHA and
20 some ETA depending on the dates?

21 MR. GOURIS: That is what they're required to
22 do; I can't speak for what they're actually doing but
23 that is what they're required to do. And they have a
24 one-page inspection form that I've seen that intends to
25 accommodate either of those standards.

1 MR. VASQUEZ: And then we're going to have a
2 whole third different list.

3 MR. GOURIS: We already do, we currently do
4 have a third list.

5 MR. VASQUEZ: Okay. But it's a third list
6 that's going to apply to everybody.

7 MR. GOURIS: Right. But now what we're going
8 to do instead is when we go out and inspect we're going
9 to have an either ETA or OSHA based standard based on
10 what the age of the property is, using the rules that
11 exist, the federal rules that exist, and then have these
12 ten things -- which won't be ten on both ETA and OSHA,
13 there will be, I think, six on OSHA and four on ETA, or
14 something like that because they overlap or they don't
15 overlap some things.

16 MR. VASQUEZ: And I'm almost done with my
17 questions, I promise.

18 MR. GOURIS: That's okay.

19 MR. VASQUEZ: So a facility could meet one of
20 the two federal standards and not meet our state
21 standard.

22 MR. GOURIS: If they don't certify that they
23 also meet the nine things that are listed there, yes,
24 that could occur.

25 MR. VASQUEZ: So if they meet our standards,

1 the state standards that are proposed, they would meet
2 all OSHA and all ETA?

3 MR. GOURIS: They would meet the requisite OSHA
4 and ETA standards, that's correct. The idea is that we
5 don't go out and inspect something that TWC is already
6 inspecting. We allow TWC to inspect it if they're
7 inspecting it and we accept their inspection, along with
8 a self-certification from the employer or the provider
9 that says they meet these other requirements as well.
10 And if they don't, then we'd go out and inspect; or if we
11 receive a complaint that says, hey, they're not meeting
12 the standards, we'd go out and inspect or if TWC doesn't
13 do the inspection that year for whatever reason, we'd go
14 out and inspect and we'd use what should be the same
15 standard but our inspectors and their inspectors are
16 going to be using slightly different forms because I'm
17 not sure how the TWC does all of their inspection work
18 other than knowing what their inspection standard is. I
19 mean, I know what their inspection standard is, I don't
20 know what their actual practical method of achieving that
21 standard is. We're outlining it in our rule a little bit
22 more succinctly, I think, as part of that.

23 MR. VASQUEZ: And just so I liked about almost
24 being done.

25 MR. GOURIS: That's okay.

1 MR. VASQUEZ: So if we're going out and
2 inspecting and we're only charging a \$25 fee did you say?

3 MR. GOURIS: No, no. If we're going to go out
4 and inspect, we're going to charge \$250, if we can use
5 the TWC inspection and self-certification, then the
6 licensing fee will be \$25 for that provider for each of
7 the first two years that we're able to use the TWC
8 inspection. After that we'll come back and say, hey, is
9 this working or not, do we need to change the fee, or
10 whatnot. Right now in the rule if we didn't change, we
11 would just charge them \$250 thereafter per year.

12 MR. VASQUEZ: And there's no U.S. Department of
13 Labor inspectors?

14 MR. GOURIS: There are U.S. Department of Labor
15 inspectors, but I didn't want to confuse the situation
16 any further, but I will share with you what I understand
17 about them. They don't actually go out firsthand first
18 time, they go out on complaints or on concerns. So if
19 there's some reason for them to go out because there was
20 a problem, then they would go out. It typically has to
21 do with it's the Division of Wage and Hour or Hour and
22 Wage, I can't remember, but they'll go out and do some
23 inspections as well.

24 There's also been a call, just side note, FYI,
25 by some of the advocacy groups for all of our inspectors

1 to get together and kind of compare notes as to how to
2 inspect things.

3 MR. VASQUEZ: What a concept.

4 MR. GOURIS: And we're working on that but we
5 don't want to be the tail wagging the dog in that
6 situation, we want to be able to let TWC take the lead if
7 they so choose, I think.

8 MR. VASQUEZ: And actually, does any public
9 member have any comments on the subject?

10 MR. GOURIS: We have a couple of people that
11 want to speak to it.

12 MR. VASQUEZ: Let's let you sit down for a
13 second. We'll get to everybody.

14 MR. DeLEON: (By interpreter.) Good afternoon.
15 My name is Justino DeLeon. I come from the south from
16 Pharr, from the Rio Grande Valley. It's a privilege for
17 me to be before you to give live testimony of a severe
18 case of housing that operates in the area.

19 I have been living under conditions that don't
20 comply with the dignity of a farm worker ever since I
21 crossed the border in 1973. I have always worked in
22 agriculture as a farmer and I have witnessed and I have
23 suffered many injustices. Last time I had to sleep I was
24 forced to sleep on cardboard on the floor. It was very,
25 very hot and there were mosquitoes, and we were forced,

1 because of the heat and the mosquitoes, to go out and
2 sleep in the truck.

3 I believe that I'm here because I want that
4 others don't suffer the same conditions that I had to
5 undergo. I'm not asking for anything fancy, I'm just
6 asking some basic conditions because we come here to work
7 and we put quite a bit of effort so you can have on your
8 table the fruits and vegetables that you have.

9 And I've seen that in many places there's not
10 even a sign that is posted that it's saying how many
11 workers can be there, so I believe that the Labor
12 Department should be inspecting these places. It doesn't
13 happen, there are no inspections, and this is just not in
14 Texas, I have seen the same thing in Kentucky, in
15 Michigan, in many other places. The conditions, they
16 don't carry out what is necessary to overlook the
17 conditions, so it's not just in Texas.

18 I'm very thankful because that you are really
19 hearing my complaint, that I'm allowed to give this
20 testimony and I hope that there will be a positive
21 response to this. Right now I cannot work, my left leg
22 was amputated. If it wasn't for that, I would still be
23 working with my hands to provide and to contribute to the
24 U.S. economy.

25 God bless you.

1 MR. VASQUEZ: Mr. DeLeon, thank you for your
2 work and your words.

3 MR. MAUCH: Good afternoon. I'm an attorney
4 with Texas Rio Grande Relate. We're a nonprofit
5 organization that provides free legal services to low
6 income Texans, like Mr. DeLeon. I'm member of our farm
7 worker team which works with migrant farm workers in
8 Texas and six other southern states.

9 I think a little bit of context might be useful
10 here. According to recent estimates, there are
11 approximately 750,000 migrant farm workers in the State
12 of Texas. They have around 500,000 family members that
13 don't work that travel with them every year from work
14 site to work site. And in view of that sheer number of
15 migrant farm workers and also my organization's
16 experience working with migrant farm workers, it's very
17 clear that this is a massively just ignored problem and
18 that the vast majority of migrant farm workers in the
19 State of Texas live in housing that should be licensed
20 but for one reason or another it's not.

21 A large part of the work that needs to be done
22 is not necessarily regulatorily but bringing people into
23 compliance. I think Tom laid out the philosophy of the
24 TDHCA which has been that it's an agency that doesn't
25 have the money to go out and enforce the law, that it's

1 complaint driven, it's request driven, and I think the
2 goal of a lot of these regulations has been to bring more
3 people into the system, and in my experience, even just
4 bringing people into the system would be a good thing.
5 The standards as they are now I think are fine in terms
6 of protecting farm workers, the issue is just getting
7 people into the system.

8 To that end, I think there are a couple of
9 things that I wanted to highlight in terms of bringing
10 folks into the system. The first is the reduced license
11 fee which is cut from \$250 to \$25 for the first two years
12 for folks who are already licensed under the federal
13 standards and become licensed for the first time with the
14 TDHCA. This does have the potential to undermine the
15 TDHCA's ability to enforce the law.

16 Prior to the 2016 session, TDHCA had no
17 specific budget for migrant labor housing at all. In the
18 2016 session there was an appropriations rider which
19 passed which allocated \$20,000 for the biennium to TDHCA
20 for the enforcement of this program which is a drop in
21 the bucket compared to California which spends \$750,000 a
22 year and Michigan which spends one million dollars a
23 year. This appropriations rider was passed, obviously
24 more would be good, but it is what passed based on the
25 licensing fees that were collected in the previous

1 biennium. So to the extent that driving more people into
2 the system will increase licensing fees, hopefully that
3 increase the TDHCA's ability to actually follow their
4 mandate in enforcing this law.

5 The concern, I think, that exists with regard
6 to the discount on licensing fees, first of all, that
7 there haven't been any complaints to the TDHCA about the
8 current licensing fee. In fact, it's a lot smaller than
9 it used to be. When TDHCA took over the program in, I
10 think, 2006 or 2005, the licensing fee was \$750, now it's
11 \$250 for the year. The second thing is if an
12 appropriations rider were to be proposed in the 2019
13 session based on licensing fees from this biennium and
14 those licensing fees are \$25 an employer instead of \$250
15 an employer, obviously that's a lot less money that TDHCA
16 has to actually regulate.

17 The other concern in terms of bringing folks
18 into the system is the actual mechanism for using the
19 federal inspections, either the ETA or the OSHA
20 standards, to then get compliance to the higher Texas
21 standard. One thing that is very common in the
22 agricultural industry that we see time and time again is
23 that there are a lot of fly by night operators who will
24 not comply with the law unless they are absolutely forced
25 to, and there are actually instances that have been

1 documented by the Austin American Statesman, there's a
2 2015 article called "Unlivable: How Texas Fails Farm
3 Workers" that documented the TDHCA's enforcement
4 practices for migrant labor housing. That article
5 specifically points out a couple of instances in which
6 the TDHCA offered a license to a housing provider and
7 said, Hey, we're going to give you a license
8 provisionally but there's one thing you need to correct,
9 if you could just certify to us that you're going to
10 correct it, that would be great. And then the next year
11 the same provider, gets inspected, and what do you know,
12 the same problem is still there.

13 We see this also with employers in the H-2A
14 program. One of the massive loopholes in the H-2A
15 program -- again, there are hundreds of providers in the
16 H-2A program -- very few of them, less than half of them
17 are actually inspected because of the loophole that
18 exists in federal law that doesn't exist in Texas law for
19 hotels and other public accommodations, and in order to
20 qualify for the loophole as an employer, all you have to
21 do is say I certify that this is public accommodation
22 housing that falls under the exception, and the TWC won't
23 go out and inspect.

24 Our experience in working with farm workers is
25 that even in cases where there's a plausible argument

1 that the public accommodation exception should apply, it
2 really often is misapplied because housing isn't offered
3 on the same terms and conditions to farm workers as it to
4 other hotel occupants. Our experience has been
5 certification is good but it's not enough, trust but also
6 verify. These regulations don't contain specific
7 provisions that get to that verification and I think it
8 would be a good thing to see -- you know, just have a
9 requirement that if there is a physical structure that's
10 being altered, if you're putting screens on the windows,
11 you're installing a washer and dryer or putting in stalls
12 and showers, take a photo of it and have that actual
13 documentation rather than a certification. That's really
14 administrative oversight and I think drastically
15 increases the likelihood that the rules are going to be
16 complied with.

17 In terms of the actual standards, again, I
18 think the state standards, as they are, are pretty good.

19 There are, I think, four changes that I wanted to
20 highlight that would change between the current set of
21 regulations and the proposed set of regulations.

22 The first two only apply to pre-1980 housing,
23 that's the ETA housing, so for this housing compared
24 between the status quo and these proposed regulations,
25 the square footage requirements for workers would go down

1 and housing would not be required to have a four-burner
2 stove, you could use a hot plate instead. Both of these
3 requirements are particularly important for workers that
4 live in hotel housing which is becoming more and more
5 common as the housing stock in Texas ages, especially in
6 rural communities. What we see really often is that
7 workers are overcrowded in hotel rooms, they don't have
8 adequate cooking facilities and so they're either eating
9 fast food or they have a hot plate and because hotel
10 windows don't open, their hotel room is full of smoke and
11 it's a huge health hazard in addition to being a fire
12 hazard.

13 The other two particular standards I wanted to
14 highlight that would apply to all housing, these are
15 standards that would disappear under the proposed regs,
16 are a lavatory sink at the housing site. Again, not
17 required for some reason under the federal regulations,
18 the Texas regulations have the good sense to require a
19 sink in the bathroom.

20 I don't think that's that big of an ask. The
21 other thing is a vector control plan for pests. This is
22 a huge issue for workers. I can't tell you how often I
23 have a worker come into my office and tell me that
24 they're sleeping in facilities where they have tarantulas
25 and scorpions crawling on them while they sleep, they've

1 got, as Mr. DeLeon mentioned, mosquitoes which are a
2 vector for disease. One of my co-workers in Austin has a
3 jar of scorpions in her office that's this big that his
4 full of scorpions that a client collected because they
5 were crawling on him in his sleep. So pest control, I
6 think, in terms of health and safety, it is something
7 that does affect farm workers quite a lot and it is
8 something that does disappear under these current
9 regulations.

10 And then a couple of points in enforcement.
11 This is not a proposed change but it's just the state of
12 the regulations. Under 90.8 where the administrative
13 penalties and sanctions are outlined, and this is all
14 theoretical because the TDHCA has not assessed a penalty
15 or sanction in the ten years it's had the program, but
16 hopefully as we get people in the program we can see some
17 state enforcement where there are bad actors. So the
18 90.8(b) specifies that for each violation of the act or
19 rules a penalty of up to \$200 per violation may be
20 assessed. That's the same language that's in the current
21 regulations, but if you look at the statute, the statute
22 specifies that the TDHCA has the authority to assess a
23 penalty of \$200 per violation per day.

24 The penalties are entirely permissive, they're
25 not mandatory under the regulations or the statute.

1 There's no reason for the TDHCA to limit itself in its
2 own regulations in terms of the penalty structure.

3 The other issue that I wanted to highlight with
4 regards to enforcement -- and this is, I apologize, a
5 little technical -- is under 90.2 on definitions, sub
6 (10) is provider. So one of the issues, just to give you
7 a little bit of context, that is really hard to regulate
8 in migrant farm worker context is who's actually holding
9 the bag for being in charge of making sure that the
10 workers have good working conditions. And this
11 definition of the word "provider" I think is an attempt
12 by the TDHCA to get at trying to figure out the person
13 who actually is morally responsible or the person who is
14 actually responsible in terms of their obligations to the
15 worker should be the provider who should be the person
16 who's regulated by the statute.

17 The issue with the provider language in the
18 proposed regulations is that it's somewhat narrow. It
19 says any person who knowingly provides for the use of a
20 migrant labor housing facility by migrant agricultural
21 workers is a provider. And then if you look at 90.3,
22 applicability, there's some language in there that also
23 works in facilities that are contracted for by employers.

24 The problem is that oftentimes you'll have someone in
25 the farm worker context whose specific role is to create

1 this knowledge gap between the employer and the
2 workforce. One example that we see all the time is we'll
3 have -- this is kind of in the chicken industry -- in
4 processing plants you'll see a worker (sic) who employs
5 half the workers on his processing line, half of the
6 workers on his processing on his processing line are
7 employed by a farm labor contractor because those folks
8 are undocumented, and the folks employed by the farm
9 labor contractor often have much worse working
10 conditions.

11 The reason that the employer who owns the
12 slaughterhouse and the processing line hires the farm
13 labor contractor is so they can say I didn't know
14 anything. This is a really, really common occurrence in
15 all sorts of farm worker contexts, and I think the
16 provider language, while the intent is good, it does, I
17 think, implicate some problems in terms of employers
18 trying to find loopholes to sort of get out of being able
19 to prove that they have knowledge that their workers
20 worked at a certain site.

21 MR. VASQUEZ: Mr. Mauch, are you getting close?

22 MR. MAUCH: Yes. That's actually about where I
23 was ending, so if you've got any questions, I'm happy to
24 take them.

25 MR. VASQUEZ: Okay. You bring up a lot of

1 interesting points. I assume you've had these same
2 discussions with the folks at TWC?

3 MR. MAUCH: In what sense?

4 MR. VASQUEZ: Well, in highlighting all these
5 issues, they have gaps in their rules or statute or how
6 they're reporting things.

7 MR. MAUCH: Well, TWC doesn't apply the state
8 regulations.

9 MR. VASQUEZ: Only the federal.

10 MR. MAUCH: Yes. We have dialogue with the
11 folks at TWC all the time about the H-2A visa program,
12 but not about the state regulations specifically.

13 MR. VASQUEZ: And in one of my past life
14 appointments I was actually chairman of the Texas
15 Department of Licensing and Regulation where there's just
16 numerous -- it's kind of the state's umbrella agency with
17 all sorts of licensing and regulation and all kinds of
18 crazy things, but one of the biggest issues was it's
19 super difficult if the legislature provides oversight
20 responsibility but not the funding to go out and really
21 do that. And I agree, \$20,000 is not even a drop in the
22 bucket.

23 I'm not necessarily going to address all of
24 your issues right now, but I think what I'm about to
25 propose, I imagine your group would see it as a positive

1 step. I guess before I summarize, is there anybody else
2 specifically that wants to also chat. Will it be long or
3 short?

4 What I'm saying is from my observations here
5 from what I read beforehand and then understanding,
6 there's so much conflict in the rules between what we're
7 proposing here -- not that this is all bad, it's good for
8 what it is, but in the context of that there's other
9 players, the TWC, Department of Labor, the H-2A visas,
10 there's going to be so much conflict between different
11 areas, I'm not comfortable putting forth this rulemaking
12 until we have more discussion between our department -- I
13 think you must have mentioned bringing in all the players
14 together.

15 Are we on any kind of timeline where this has
16 to be done, Mr. Eccles, in this meeting?

17 MR. ECCLES: In this meeting you've been
18 dealing with the QAP and that's on a strict statutory
19 timeline. This is not part of the QAP.

20 MR. VASQUEZ: I mean, we can send this back for
21 further development. And again, I fear not having
22 coherence between our group and these other groups that
23 are supposedly doing their inspections and such. I don't
24 want to create more conflict by just in essence not
25 having this set up. I'd rather we give the Board a

1 little more confidence that all of this has been fleshed
2 out.

3 MR. IRVINE: We've got current rules that are
4 in place, and I think Mr. Mauch has expressed he's
5 comfortable that they're acceptable rules. I think that
6 the real focus right now is how do we expand this
7 universe of folks that we've licensed and inspected to
8 encompass the H-2A visa housing solutions, whatever they
9 might be, and pull them in but under the same standard,
10 and to me that's more of a process that will take time
11 but it's already begun. We have, as Tom said, contacted,
12 I believe, about 180 of them to advise them of our
13 licensing requirements. We're beginning to get licensing
14 applications coming in. We will get after the business
15 of processing those.

16 As regards funding, in our legislative
17 appropriations request we sought to go from a GR
18 appropriation to an appropriated receipts approach where
19 basically every time we collect a licensing fee it's
20 appropriated back to us to help defray the cost of going
21 out.

22 MR. VASQUEZ: That's how TDLR does it, the
23 licenses pay for the program.

24 MR. IRVINE: Right, exactly.

25 I think we're absolutely pointed in the right

1 direction. I think that these rules were largely born
2 out of a hope that there was some sort of way that we
3 could harmonize what we did with what TWC and DOL are
4 doing, and I just get the sense that that's really not
5 going to align, that Texas standards are different from
6 the DOL standards, and for the moment we'll continue to
7 operate under our current rules which enforce the Texas
8 standards.

9 MR. VASQUEZ: I think if we can still have more
10 communications that get better alignment between all
11 these different agencies. We need to work on how the
12 budget request works because we can't have a toothless
13 program. If we're going to do this, we have to do it
14 right.

15 MR. IRVINE: I agree.

16 MR. VASQUEZ: Do you have any other comments to
17 add? So my recommendation, my request is that the Board
18 ask the Department to bring us that report of where we've
19 consolidated our plans. On the other hand, taken from
20 the perspective of there's got to be some groups out
21 there that are trying to do it right, and then if they
22 have TDHCA coming one day, TWC coming another day and
23 they're getting stuff from the feds coming down, that's
24 unfair as well, which, in my mind, will discourage people
25 from coming out of the shadows.

1 So if we could push this off to another meeting
2 after having had much more of these different interagency
3 discussions to coordinate, and then -- well, we will soon
4 have the opportunity with the legislature, and the
5 advocacy groups out there, it's critical. We can only do
6 so much without the funding, so help us help you. I'm
7 assuming we're allowed to just -- we're kicking it down
8 the road a little bit but let's do it right. I don't
9 want to be saying here are the new rules.

10 MR. IRVINE: I don't think you're kicking the
11 program down the road, I think you're just kicking the
12 rule tweaks down the road. I think that the program has
13 really kind of been galvanized. I mean, Tom has really
14 stepped into the breach here and created a lot of
15 channels of communication, not only with the advocacy
16 organizations and the legislators, with TWC, but we're
17 also making inroads with some of the local providers out
18 there in the field, trying to build relationships and
19 awareness. You'll hear a report tomorrow
20 about the branding concept, and I really think that there
21 is something positive about the brands not only for the
22 worker who can migrate to our symbol of safe, decent,
23 licensed, regulated housing, but also to the provider who
24 can say this is a way that I can attract and retain the
25 best possible workforce.

1 MR. MAUCH: One more thing on the program?

2 MR. VASQUEZ: Sure.

3 MR. MAUCH: Well, I guess two things very
4 quickly. You used the word "conflict." I think I would
5 avoid the word "conflict." The federal law is the floor
6 and the Texas law is a little bit higher than that floor.
7 There's not necessarily, as far as we can tell looking at
8 the standards, where one law says something incompatible
9 with the other.

10 The other thing I'd say, just in terms of you
11 asked about timeline, I think everyone here shares the
12 goal of driving more folks into the program. One thing
13 that we've noticed that's come up in conference calls
14 that I've been on with TDHCA and some employer groups has
15 been this discount, you know \$250 a year to \$25 a year,
16 has caused a couple of folks to say, well, hold on, if I
17 can just wait until these regulations come into effect
18 then I can save myself \$200, so I'm not going to get
19 licensed, I'm going to just wait for a few months. And
20 there's really no incentive for the employer not to do
21 that because there's no enforcement of the law and the
22 status quo. So that, I think, in terms of timeline might
23 be one thing, and it doesn't necessarily mean that the
24 rules would have to be considered now, it would just mean
25 maybe something that staff could consider in terms of

1 communications with employer groups in terms of discounts
2 to the annual fee.

3 Thank you for your time. Appreciate it.

4 MR. VASQUEZ: Thank you, Mr. Mauch.

5 *Señor DeLeon, gracias.*

6 All right. Come on up. This is the last thing
7 on the agenda.

8 MS. TYLER: And I won't take too much time, and
9 this is not what I thought I would be saying either. My
10 name is Kathy Tyler, I'm here representing myself, but I
11 have worked farm worker communities since 1980.

12 I've seen a lot of the 48 properties that are
13 licensed, and have followed this program since it came
14 over to TDHCA, and I won't reiterate the full discussion
15 that you've had, and TDHCA staff knows that I'm a broken
16 record in terms of what I would hope that we would do, in
17 addition to licensing, is to provide some incentives for
18 farm worker housing, decent, well established, good
19 housing like our tax credit properties be established for
20 farm workers, and our programs right now don't do that
21 very well, it's too difficult.

22 There are some things that we could do that
23 would encourage, so the housing authorities and the
24 nonprofits would be developing this housing, and this is
25 what other states do, so that they don't rely totally on

1 growers and employers, but there's a nonprofit community
2 also providing this housing. So I know it's too late to
3 comment on the QAP or multifamily housing, and there is a
4 federal program, the Farm Labor Housing through USDA, the
5 514/516. We have a difficult time bringing in federal
6 funds that are available into Texas. Those federal funds
7 are available to us, we just don't access them, and part
8 of that is because we don't have the leverage funding,
9 the ability to compete well with states that do it better
10 than us. So that's a direction that we could take apart
11 from the rules.

12 And that property also has rental assistance
13 and we're in danger of losing the rental assistance that
14 we currently have, as well as we could be bringing in new
15 rental assistance so farm workers could afford to live in
16 this housing. It's more difficult for migrant workers,
17 and I know we're talking about migrant, but these migrant
18 workers who live in this licensed housing are usually
19 living in substandard housing in their home base too, so
20 it's something that I wish we would do a better job of.

21 So thank you very much.

22 MR. VASQUEZ: Thank you.

23 So, Mr. Irvine, is there anything else we need
24 to address?

25 MR. IRVINE: No, sir.

1 MR. VASQUEZ: And there's no need for executive
2 session, so being that there's no further business for
3 the Rules Committee of the Texas Department of Housing
4 and Community Affairs, it is 4:25 and this meeting is
5 adjourned.

6 (Whereupon, at 4:25 p.m., the meeting was
7 adjourned.)

C E R T I F I C A T E

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MEETING OF: TDHCA Rules Committee

LOCATION: Austin, Texas

DATE: September 5, 2018

I do hereby certify that the foregoing pages,
numbers 1 through 139, inclusive, are the true, accurate,
and complete transcript prepared from the verbal
recording made by electronic recording by Nancy H. King
before the Texas Department of Housing and Community
Affairs.

DATE: September 11, 2018

(Transcriber)

On the Record Reporting &
Transcription, Inc.
7703 N. Lamar Blvd., Ste 515
Austin, Texas 78752