TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Dewitt C. Greer Highway Building
Ric Williamson Hearing Room
125 East 11th Street
Austin, Texas

February 28, 2017
9:00 a.m.

MEMBERS:

JUAN MUÑOZ, Vice-Chair
LESLIE BINGHAM ESCAREÑO, Member
T. TOLBERT CHISUM, Member
TOM H. GANN, Member
J.B. GOODWIN, Member

TIMOTHY K. IRVINE, Executive Director

I N D E X

AGENDA ITEM PAGE

CALL TO ORDER 6
ROLL CALL
CERTIFICATION OF QUORUM

CONSENT AGENDA

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS: 7

LEGAL
a) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Order concerning Mission Pointe Club f/k/a Country Villa (HTC 91040 / CMTS 958)

b) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Order concerning Amistad Farm Labor Housing Phase II (HTF 98141 / CMTS 2627)

c) Presentation, Discussion, and Possible Action on Report to Board regarding the initiation of a new administrative penalty contested case hearing concerning South more Park Apartments (HTC 94004 / CMTS 1204) and the adoption of an Agreed Final Order

ASSET MANAGEMENT
d) Presentation, Discussion and Possible Action regarding Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

94193 Sterling Green Village Channelview
98135 Rio Grande Ranch Laredo
99002 Tidwell Estates Houston

MULTIFAMILY FINANCE
e) Presentation, Discussion, and Possible Action on a waiver relating to 10 TAC '§10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations

f) Presentation, Discussion, and Possible

Action on the Issuance of Determination Notices for Housing Tax Credits with another Issuer

16445 Campus Apartments Fort Worth (Pulled)

16455 Chelsea Apartments El Paso

16407 Fenix Estates Houston 12 83

g) Presentation, Discussion, and Possible Action regarding an exemption regarding Undesirable Site Feature under 10 TAC §10.101(a)(2) for 2017 Housing Tax Credit (HTC) Application #17122 Bellfort Park Apartments

COMMUNITY AFFAIRS

h) Presentation, Discussion, and Possible Action on the Reprogramming of Program Year (PY) 2016 Community Services Block Grant (CSBG) Discretionary and Administrative Funds

I) Presentation, Discussion, and Possible Action on the selection of a Subrecipient to administer the Low Income Home Energy Assistance Program (LIHEAP) Comprehensive Energy Assistance Program (CEAP) to provide services in Dimmit, La Salle, and Maverick counties

j) Presentation, Discussion, and Possible Action Regarding Authorization to Release a Notice of Funding Availability (NOFA) for Program Year 2017 Community Services Block Grant Discretionary (CSBG-D) Funds for Native American and Migrant Seasonal Farm Worker Populations

k) Presentation, Discussion, and Possible Action on Approval of the Draft Federal Fiscal Year (FFY) 2017 Department of Energy (DOE) Weatherization Assistance Program (WAP) State Plan for Public Comment

l) Presentation, Discussion, and Possible Action on Awards for 2017 Community Services Block Grant Discretionary

(CSBG-D) Direct Client Assistance Funds

HOME AND HOMELESS PROGRAMS
m) Presentation, Discussion, and Possible Action on State Fiscal Year 2016 Homeless Housing and Services Program Award for the City of Houston

RULES
n) Presentation, Discussion, and Possible Action on adoption of the 2017 State of Texas Low Income Housing Plan and Annual Report, and an order adopting amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the *Texas Register*

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS: 7
a) TDHCA Outreach Activities, February 2017

b) Report on the Department’s 1st Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)

c) Report on an “unaudited subsequent event” related to the Basic Financial Statements and Revenue Bond Program for the Year Ended August 31, 2016

d) Report on the Department’s 1st Quarter Investment Report relating to funds held under Bond Trust Indentures

e) Acceptance and approval of submission of a report prepared by the Department’s Financial Advisor, George K. Baum & Company, to be submitted to the Texas Bond Review Board in accordance with Tex. Gov't Code §2306.142

ACTION ITEMS

ITEM 3: BOARD 8
Presentation, Discussion, and Possible Action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov't Code §2306.030

ITEM 4:	REPORTS		
	a)	Report on 2018 Qualified Allocation Plan (QAP) Project	9
	b)	Report on Syndication Price Issues	34
ITEM 5:	ASSET MANAGEMENT		
	a)	Presentation, Discussion and Possible Action regarding Amendments to HOME Direct Loan Terms	45
		1002029 Pine Lake Estates Nacogdoches	51
		1002048 Sunrise Town homes Fredericksburg	71
	b)	Presentation, Discussion and Possible Action on a Waiver of 10 TAC §10.101(b)(4)(E) and (F) and approval of Land Use Restriction Agreement (LURA) Amendments	74
		14409 Lakes of El Dorado McKinney 14410 Fountains of Rosemeade Carrollton 14411 Ash Park Apartments Euless	
ITEM 6:	MULTIFAMILY FINANCE		
	a)	Presentation, Discussion, and Possible Action regarding a request for waiver of rules for Merritt Hill Country, HOME Contract #1002298/ HTC #15273 (PULLED)	78
	b)	Presentation, Discussion and Possible Action on revisions to the 2016 State of Texas National Housing Trust Fund Allocation Plan and directing that it be published in the *Texas Register*	79
PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS			84
EXECUTIVE SESSION			82
OPEN SESSION			82
ADJOURN			85

P R O C E E D I N G S

DR. MUÑOZ: Good morning, everyone. We're going to begin our meeting now. Thank you all for being here. You might notice that I'm not J. Paul Oxer. And so we'll do our best to maintain the kind of levity, decorum and professionalism that J. Paul was responsible for.

I'd like to begin by turning on my microphone and then a roll call.

Leslie Bingham?

MS. BINGHAM ESCAREÑO: Here.

DR. MUÑOZ: Tom Gann?

MR. GANN: Here.

DR. MUÑOZ: J.B.?

MR. GOODWIN: Here.

DR. MUÑOZ: Juan Muñoz, we are here, and we have a quorum.

Let's stand and conduct the pledge. Tim, would you?

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

DR. MUÑOZ: Thank you for that, Tim.

We're going to move to accept the consent agenda. Are there any items that will be pulled from the consent agenda?

MR. IRVINE: I believe we have several.

MS. HOLLOWAY: Good morning, Vice Chair Muñoz, members of the Board. This is Marni Holloway. I'm the director of the Multifamily Finance Division.

For item 1(f) under application 16445 Campus Apartments, we are pulling that item at the request of the applicant.

Also under 1(f), item 16407 Fenix Estates, we would like to remove that item from the consent agenda and treat it as an action item today.

DR. MUÑOZ: Okay. With the exception of those two pulled items, 16445 Campus Apartments, 16407 Fenix Estates, a motion to accept the consent agenda.

MS. BINGHAM ESCAREÑO: Mr. Chairman, I move to accept the consent agenda with the modification recommended by staff.

MR. GANN: Second.

DR. MUÑOZ: It's been so moved and seconded. All those in favor?

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: Hearing none, the motion is passed.

Moving on to item 3, Board officers. Historically, the staff has provided the staff in the roles of secretary, assistant secretary and treasurer, and typically we accept nominations for the vice chair, and so in keeping with that tradition, is there a motion to nominate someone to serve as vice chair?

MR. GOODWIN: Mr. Chairman, I'd like to nominate Ms. Bingham to serve as vice chair.

DR. MUÑOZ: Okay.

MR. GANN: Second.

DR. MUÑOZ: Okay.

MR. IRVINE: And I would offer for the positions you mentioned that Beau Eccles would serve as secretary, Michael Lyttle as assistant secretary, and David Cervantes as treasurer.

DR. MUÑOZ: And that is as has been in the past?

MR. IRVINE: Yes, sir.

DR. MUÑOZ: Okay. Mr. Goodwin has made a motion, a nomination, Mr. Gann has seconded. There's no objections, so all those in favor please say aye.

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: Okay. Ms. Bingham, congratulations. We'll adjust the seats accordingly the future, the seats, the responsibility, all that goes with it.

Moving on to item 4, Marni.

MS. HOLLOWAY: Good morning again. Marni Holloway. I'm the director of the Multifamily Finance Division.

Item 4(a) is a report on the 2018 Qualified Allocation Plan project. We met on January 25 to continue our discussion on the 2018 QAP. The topic for this meeting was dispersion and underserved area.

Several commenters noted that dispersion was a more attainable goal this year since the 2017 QAP opened up third quartile census tracts, so we're anxious to see the results of having those other census tracts available.

Proximity to railroads continues to be a topic of conversation, regardless of the potential exemptions incorporated into the rule.

There was some conversation regarding the impact of the two-mile same year rule which has different implications for large metropolitan areas or for smaller rural towns. A suggestion was made that the distance be shorter for larger cities and we will be taking a look at that.

The attendees requested that staff revisit some of the underserved area requirements, which we will do, and this would probably be a really good topic for a forum going forward so that we can gather some more input.

Meeting participants discussed at length the question of where tax credit tenants want to live and what unit amenities and neighborhood characteristics they would be looking for when making a decision about living in a tax credit project. So staff is working on a tenant survey that will be conducted this summer, serving tenants of current tax credit properties to determine the features that they're looking for. So rather than us all sitting around trying to figure it out, we'll just go ask the question and hopefully get some good answers.

There was quite a bit of discussion about representative letters and local support and how those scoring items impact location of developments.

The QAP roundtable scheduled for February 22, 2017 was canceled due to rescheduling of the Board meeting and we're running right up against our 9 percent deadline which is tomorrow, so everybody is out there busy with their applications. Our next meeting will be held on March 22. At that one we will be covering opportunity index.

I'd be happy to answer any questions.

MR. GOODWIN: Marni, I have a question. How much demographic data do we have on the tenants in these projects now, and do we have a database that tells us how many veterans or how many disabled veterans we serve?

MS. HOLLOWAY: Not necessarily getting down to that very granular level. You know, we're going to have information about we have X number of tenants in this income level, or we have X number of tenants that live in a seniors project so we can make certain assumptions about the age of those households, that kind of thing. But getting down to that very granular are they veteran, are they not a veteran, if there wasn't a reason for them to report it to us when they moved in, we wouldn't have that information.

It's the same thing with disabled households, if they're not going into a designated accessible unit because they don't necessarily need that accessibility, we wouldn't know that there was a disability within that household.

MR. GOODWIN: Okay. Thank you.

DR. MUÑOZ: Are there any other questions from the Board?

(No response.)

DR. MUÑOZ: Just a reminder that if you're interested in making some sort of comment related to this or any other item, I'd like to continue the way we have in the past and invite you to sit up front where you're conveniently located in proximity of the podium in the interest of time and where everyone has an opportunity to communicate their concerns.

Is that all, Marni?

MS. HOLLOWAY: That's it.

DR. MUÑOZ: Okay. Then no action is necessary. We'll just accept your report.

MS. HOLLOWAY: This is just a report item.

DR. MUÑOZ: You might need to stay there, though. Let's take up 16407 Fenix.

MS. HOLLOWAY: Fenix Estates.

16407 Fenix Estates, the item is titled: Presentation, discussion and possible action on the issuance of determination notices for housing tax credits with another provider.

For Fenix Estates, staff had prepared for your Board book a recommendation for approval of this application. Since the Board book was published, additional information has come to light, and staff is at this point withdrawing our recommendation for award to this application. The information that Brent is going to share with us was not presented to EARAC, so the deal as it sits right now, from what we've learned over the last 12 hours, 24 hours, is not the development that was originally presented to EARAC. So staff doesn't feel without that EARAC recommendation we are not able to make a recommendation for approval. So Brent has some information for you about what's going on.

DR. MUÑOZ: Thank you.

MR. STEWART: Good morning. Brent Stewart, Real Estate Analysis.

So this transaction is a supportive housing transaction that's being sponsored by the Harris County Housing Authority in conjunction with Harris County and also with some funds being provided by the City of Houston. It's a 200-unit supportive housing transaction. It was originally submitted to the Department back in March of 2016. It's been a difficult transaction for everybody involved, for the housing authority, for the county, for us, the city. These transactions are hard to put together. It's a bond transaction, $30 million bonds with 4 percent tax credits, and then a large amount of HOME, CDBG and other funds. The other funds, at the end of the day, are basically going to pay off the bonds that are used for the construction and then also provide for some permanent financing.

So most recently, REA kind of picked back up in December underwriting the transaction, and in early February we received some new information about construction costs, and we had a sit-down meeting with the applicant and discussed that, and then received some additional documentation. At that time the costs were tied to what the contractors bid at that point in time was. The housing authority went through a procurement process and selected a contractor and probably didn't execute the contract but at least had a firm bid. And then still working through it, February 14 we received some updated operating budgeting information pro forma. Given the amount of federal funds in the transaction, we were struggling with how those funds get repaid and how they get determined to be valid debt. We got through that process.

February 24, which I believe was last Friday, we published our underwriting report, making a recommendation for a tax credit amount. And yesterday, through doing some due diligence on another transaction, yesterday we determined that there was a public notice issued by the city for a comment period that started last week and runs through March 25 regarding the city putting additional HOME funds in the transaction. And in that public notice it discussed that the total cost of the project went up from $46 million, it went up $11 million total.

About 5:30 last night we received some information from Ms. Jackson, who represents the applicant, that kind of broke out what that $11 million is and represents. About $7 million of it relates to costs incurred by the county, including the acquisition of the property. The county acquired the property, they are leasing it to the housing authority to perfect the property tax exemption. That other $3 million is related to increased costs of the project, there's some soft costs involved, there's about a million dollars of developer fee involved, and Ms. Jackson did indicate that the $7 million piece of that is not being included in the actual budget that's part of the project.

Having said all that, and unfortunately, not having that information, we're withdrawing our underwriting report at this time until we have an ability to analyze that updated information. And I think as a result of that, also the EARAC recommendation is basically invalid because of approving a recommendation based on an underwriting report that is now withdrawn. There's still been some information that came in this morning regarding those additional funds coming from the city that are now not going to be HOME funds but TRZ funds. I'm not disputing it, but because of that, that will also impact the underwriting. It will be a help to the underwriting but it will also impact the underwriting. Bottom line, we don't have a valid underwriting report and the underwriting report is being withdrawn.

DR. MUÑOZ: Thanks, Brent.

MR. GANN: I've got a question. Brent, some of these things you may not know now, but if you get the correct report in, how long would it take you to determine if this is still okay?

MR. STEWART: That's really hard to say not knowing what's behind those numbers and what those might lead to.

Unfortunately, the underwriter on this transaction is no longer with the Department, and so quite frankly, it would take staff a little bit of time just to make sure we're back up to speed on everything involved. But it's hard to say, it's dependent on what's there.

DR. MUÑOZ: Approximately how much time? I mean, I appreciate you saying it would be hard, but what, a week, a month?

MR. STEWART: What's today? No, no. I mean Friday.

MR. GANN: After you get the information.

DR. MUÑOZ: And that might not be a long time.

MR. STEWART: It would be certainly dependent on the applicant.

DR. MUÑOZ: You said we just found out. How did you find out?

MR. STEWART: I was providing some training, basically saying, please, when there's other subsidy money involved from a city or from a county, go look at the city council, go look at the county commissioners court to figure out exactly where they are in the process, has it been approved by the city and the county, has it been approved. Many times those approvals have some nuances to them that are a little different than what we have, and most of the time there's an explanation for that. But the exercise was to have staff make sure they check those kinds of things, and so I used Fenix as an example and came across the public notice.

DR. MUÑOZ: And if you hadn't come across it?

MR. STEWART: We would not be aware.

MR. IRVINE: I'd just like to note that at this time staff is not making any recommendation, therefore, no motion and second is required before you receive public comment on it, but the matter is posted so that if the Board ultimately decides that any action needs to be taken, it has that authority.

DR. MUÑOZ: Okay. Thank you, Mr. Irvine.

Are there any other questions from the Board?

MR. GOODWIN: On the report I see a total capitalization of $43 million, and I thought I heard you say it was 46- that jumped to 57-.

MR. STEWART: The amount indicated in the public notice was 53 million five. Our underwriting report showed -- what did you say?

MR. GOODWIN: It shows $43,113,998.

MR. STEWART: That's right, that's what we underwrote.

MR. GOODWIN: Okay.

MR. STEWART: Now, again, we're told now that approximately $7 million of that, which is primarily the acquisition cost of the property by the county, and although this notice says that the project cost is now $53 million, if you back that out and you back out some of these other costs, prior architectural fees, prior developer fees, et cetera, you get back down to about $46 million, so it's a $3- to $4 million increase on what we would be underwriting for purposes of the project costs. So the notice is a little bit -- the notice is based on the costs that the city originally was aware of or knew -- Ms. Jackson can speak to this -- and the $53 million is inclusive of those costs from the county, and I understand that the city wanted those total numbers put in their public notice.

DR. MUÑOZ: Brent, you go back and you do your underwriting analysis again, so then what happens, this comes before us at the next Board meeting?

MR. STEWART: Well, we would publish an addendum to the underwriting report.

DR. MUÑOZ: Is it an addendum or is it a new report because you're withdrawing the original one?

MR. STEWART: That's a good question. We would publish either a new underwriting report or an addendum to the one that's posted on the website. That underwriting report itself is public information now and so I'm not sure that we wouldn't want to just provide an addendum to it so that somebody reading the record could see what originally happened. I would defer to Beau on that.

So a new underwriting report would be published, then it would need to be -- the termination notice can only be made by the Board, and so it would have to go back through the internal processes and EARAC to make that recommendation to the Board, assuming you guys weren't approving a determination notice today.

MR. IRVINE: To clarify, if the Board does not make a determination notice, the applicant can still go ahead and close on its bonds, and then when it completes construction, claim credits. Correct?

MR. STEWART: I've not had an opportunity to discuss that issue with the applicant, but it's a Priority 3 transaction with the Bond Review Board which means there's no mandatory set-asides required under the bond program that's administered by the Texas Bond Review Board.

Pursuant to law, Section 42, or state statute, you can close a transaction without having a determination notice on a Priority 3 transaction. It's possible that an applicant doing a Priority 3 transaction doesn't even have to use tax credits. We've had discussions with some applicants about that recently.

So theoretically, they could close the transaction without the determination notice. I think the issue is whether or not the equity, who's the one at risk at that point with the tax credits, would be willing to close the transaction without a determination notice. Tax exempt bond transactions, a determination notice is issued which is basically kind of an indication of what the tax credit amount would be. At cost certification they are able to come in and ask for more tax credits because the 4 percent program, the amount is based on certified eligible costs at the end of the day. How that fits in with other participants involved in this transaction, again, this information became available around 5:30 last night, so Ms. Jackson would be the one to be able to answer those kinds of questions.

DR. MUÑOZ: We weren't able to put it together since 5:30? I'm playing with you. Okay. Thank you.

Any other questions?

(No response.)

DR. MUÑOZ: Public comment. Be sure to sign in, would you, please?

MS. JACKSON: Good morning, Board. Toni Jackson.

I would like to talk to you a little bit about the timing of this transaction. We definitely apologize for everything that has gone on with this transaction, and as Brent has said, this has been a very difficult transaction, and I appreciate the fact that the Department has worked with us so closely with this transaction.

This is a deal that the City of Houston and Harris County wanted to do together because they wanted to address some of the homeless needs in the City of Houston, and it began actually under the former mayor, Mayor Annise Parker, because of one of the supportive housing developments that is going to be closed. They worked on the development for about a year just bringing the land together because the land actually was purchased by the county but the city had a portion for the land and then there was a commercial piece and then there was a land swap, so there were a number of things that came together to actually bring the land together. And then Harris County Housing Authority was brought into the deal to actually take the deal forward.

We went through procurement three times for a general contractor because, again, the supportive services on the location, a number of things, working to get the costs to where they were, and we found ourselves into late fall of this past year. Then when we thought that we were getting closer to working out everything in terms of the permanent supportive housing, getting everything together with the contractor, all of the other sources coming together, then we had what each of you are fully aware of is we had a crisis with pricing. This deal was originally priced at a dollar and eleven cents and our investor has come back to us and repriced it twice and now we are at 92 cents of pricing. So that created some incredible gaps on the deal, not to mention soft costs increasing because we've held the deal so very long trying to get the deal to the closing table.

With all of that said and done, we do have some very real timing concerns. The bonds expire on March 27. The reason that the bonds cannot be very easily extended is because we are working from a carryforward that expires, and that's a $30 million carryforward. However, if we sought to induce the bonds again after the 27th, we can only induce up to $20 million of bonds and the transaction will not work with that lower inducement amount.

Additionally, Harris County, not the housing authority but Harris County proper, who is putting a good deal of money into the deal, is utilizing 2014 funds and those funds expire. The staff just asked me a question in terms of what happens when federal funds expire. They actually go back to HUD but HUD does not automatically reissue the same amount of funds. More often than not, when funds are lost to HUD, be it a city, a county or even TDHCA, HUD has the right to reduce the amount that they reallocate. And so those funds are at jeopardy of being lost as well.

The funds, as Brent mentioned, we are showing the funds, and brought to the attention we had no idea that the city was planning on publishing the amount that showed the funds prior to Harris County Housing Authority coming into the deal and that are not going to be a part of the deal. They asked us for those numbers but we never knew that they intended to publish them because we are not responsible for them. They are amounts that have been paid, they were related to, again, the acquisition, the demolition because there was some demolition that had to take place on the land and some other costs that, again, they incurred and paid prior to this transaction really coming together.

We were not responsible for those costs, the partnership would not be responsible for those costs, those costs are outside of the deal. However, the city did choose to publish them, and we are, again, baffled by that because the last publication that they did, they did not include that amount, so we were unaware. And I actually had not seen the publication until Brent actually sent it to me, so we had no idea that they were going to publish that full amount because, again, that full amount is inaccurate in representing that that is the amount of the transaction because it is, in fact, not the amount of the transaction.

DR. MUÑOZ: Toni, I'm going to ask you to bring your comments to a close.

MS. JACKSON: No problem.

So what I'm standing before you today to ask, because of the timing on everything that has taken place, because we are about to lose the transaction if we are unable to meet closing and because you're next Board meeting is actually on the day that we would need to be at the closing table in order to meet our statutory deadline for the bond expiration, we're asking that you would agree to approve the determination today conditioned upon underwriting being satisfied. You have done that type of thing in the past. As Brent indicated, this is a 4 percent transaction and at cost certification we certify to all eligible costs and so it is not the same type of hard costs as a 9 percent, but we are asking that you approve the commitment conditioned upon underwriting.

Thank you.

DR. MUÑOZ: Are there any questions from the Board?

MS. BINGHAM ESCAREÑO: I have a question for Brent.

MR. ECCLES: Actually, if I could ask a question. Do you need the Board determination to close?

MS. JACKSON: Yes, because our investor will not close without that.

MR. ECCLES: So it's the investor's preference, not any sort of legal obligation?

MS. JACKSON: Yes. I've never known an investor who is -- although, as Brent said, statutorily they can close without it, I've never known an investor that is willing to close without having the commitment in hand. The question that I had on last week's conference call was please send everyone an email once the Board has approved the commitment. I've never known an investor willing to do that.

MR. ECCLES: Okay. Thank you.

MR. IRVINE: Can I inject a terminology issue? You refer to a commitment, we refer to a determination, it is not a commitment.

MS. JACKSON: Yes, a determination notice.

DR. MUÑOZ: Ms. Bingham, did you have a question?

MS. BINGHAM ESCAREÑO: Yes.

DR. MUÑOZ: For Ms. Jackson?

MS. BINGHAM ESCAREÑO: For Brent, I think.

So if you pull you the acquisition costs of the county and then the difference between what was underwritten was like a $43 million and change project. Right? And what it's looking like just with the additional developer fee, soft costs, all the stuff that you and Toni mentioned, it's $46 million. Just for my clarification, would that have been material enough, like if you had seen the public notice and you had seen that the cost went from $43 million to $46 million, that would have still been material enough that you would have wanted to take a step back and re-underwrite or amend?

MR. STEWART: Yes.

MS. BINGHAM ESCAREÑO: This is a little bit more of just a judgment question, but in the spirit of wanting deals to work but also understanding that there are rules in place for reasons, and you discovered this and obviously sent it to Toni, who said she wasn't aware of it, was the city notice and the public comment time enough that your team would have expected somebody to give you heads up that there was this comment period that was extending past when the Board was going to deliberate on the determination notice?

MR. STEWART: According to the notice, the public comment period started Thursday, February 23, and ends Saturday, March 25. That timing would not work in terms of this Board's approval, and we looked at the city council schedule and it looks like they have a Tuesday and a Wednesday meeting each week, I don't know how that plays into their timing and posting requirements and so forth. I can't answer the rest of that.

MS. JACKSON: Madam, I can speak to that. When we found we still had a bit of a gap --

MR. ECCLES: I'm sorry, just for the record purposes.

MS. JACKSON: I'm sorry. Toni Jackson. I apologize.

MR. ECCLES: Thank you.

MS. JACKSON: We actually were on the phone as late as late Friday afternoon with the City of Houston. Again, we were not aware that they had posted on Thursday, because we were on the phone with the director himself still trying to work out an additional $1.9 million of funds. What they explained to us is that there was -- because we were concerned about the posting as well because they had mentioned that to us previously, and they had indicated that they would put TRZ monies into the deal rather than full HOME monies so that we could get to the closing. The director has promised us and said to us: The City of Houston will not hold this deal up, we want this deal as much as the county. And they were on the phone with us working this deal out.

Again, we had no idea that they had already posted on Thursday because we were having calls with the Harris County Housing Authority Board chair and vice chair, the director of the City of Houston and Harris County Housing Authority E-D, we were on the phone late Friday afternoon working out this situation. So we had no idea that there was still an issue in terms of how they were going to post.

DR. MUÑOZ: Thank you.

Any other questions? What gives me some pause, Brent, is this was going through, right, no issues until you discovered this. It seems like if we could find out what the new underwriting would be and EARAC, we'd be in a better position to affirm the determination or what-have-you. It seems like everybody was sort of caught unprepared for this new information, it seems like no one has had sufficient time to sort of deal with it. Do you have any suggestions?

MR. STEWART: It's a good thing it's not 9 percent cycle.

(General laughter.)

DR. MUÑOZ: Any other suggestions?

MR. STEWART: You know, clearly my staff would work hard to get an answer on this underwriting report. It's unfortunate, I believe, that we published an underwriting report with what I believe were issues that were there and existed before we published an underwriting report. That's a concern.

The public notice talks about HOME funds and Ms. Jackson, Toni, has indicated that the city would do TRZ funds. That's generally a pretty easy source of funds to deal with, assuming the TRZ is there, assuming that the funds are there in the TRZ, assuming a bunch of stuff we don't know about the TRZ. This transaction, like I said, was really, really hard to do. It has $30 million of federal subsidy in the transaction, in addition to the tax credits. We had a very hard time working on the cash flows of this transaction and making sure that those funds were considered valid debt. It's better that it's TRZ than HOME because the HOME would not have worked. But again, without having all that information, I can't guide you guys on what's here.

DR. MUÑOZ: Are there any other questions from the Board?

(No response.)

DR. MUÑOZ: I'd like to suggest that maybe we table this item and speak with our staff.

MR. IRVINE: You can't speak with your staff except through your counsel to receive legal advice.

DR. MUÑOZ: Okay.

MS. BINGHAM ESCAREÑO: Mr. Chair, I have just one I can ask, I think, and hear counsel's advice.

So Toni is asking that we condition approval determination on underwriting with the new data which is one way to go. Statutorily, we can't, or can we, as a Board, give over the decision to the executive director, or does it need to come through us? I just didn't know it affects like appeals or any other.

MR. IRVINE: Since it's not actually an award, it is merely a determination notice, I don't know of anything in statute that specifically reserves that to the Board. I mean, just crafting ideas on the fly, because I'm sensing a desire to work with the applicant, one thing you could do -- when is our next Board meeting?

MS. JACKSON: March 23, and that's the day that we really need to be at the closing table. That is the Thursday before the Monday when the bonds expire.

DR. MUÑOZ: Just a minute. Go ahead, Tim.

MR. IRVINE: You could conceivably issue some sort of green light to proceed but reserve the right at the meeting on the 23rd to revoke it.

MR. GANN: Or you could have your closing in Austin and that would work for you, wouldn't it?

MS. JACKSON: That would work for us. What I am concerned about and I'm standing here not knowing the answer, I'm just giving you based on my years of doing these types of deals, I'm worried that the investor would not move forward knowing that you have put that many caveats on it beyond just simply the caveat of conditions of underwriting.

DR. MUÑOZ: What other caveats do you believe are being attached other than underwriting?

MS. JACKSON: Well, I think the difference in you approving today conditioned upon underwriting versus waiting all the way until the 23rd, is that way you have given it to the staff to work with us with underwriting, which we believe we can get to, however, if you're waiting until that time -- and we would have to also, because of the way bond deals work, we have to actually make submissions to the attorney general by the 9th, two weeks before our closing, and so because of that, I think they would be, just again, more reluctant to wait until we saw your posting because you would not even post the transaction under the agenda item until around the 13th or 15th. So this way we know that we have at least gotten that conditioned upon underwriting as opposed to waiting and not knowing what you may or may not post.

DR. MUÑOZ: Thank you.

Any other questions from the Board?

MR. GOODWIN: I think the question for staff is are there any other caveats other than underwriting on this deal, Brent, that you know of?

MR. STEWART: We have some underwriting conditions that are fairly typical underwriting conditions, one of which was approval of the HOME funds from the City of Houston. There's some other things due at cost cert, we needed an updated term sheet from the equity provider.

The reason the process kind of is what it is is such that staff has an ability to make a determination, bring it to the Board, and the Board have an ability to hear an appeal or what-have-you, and I am not suggesting that that is necessarily a big deal but it does and can put staff in a little bit of a tough spot only because what happens if, what happens if you issue the determination notice and something comes up that we don't yet know about that we have a hard time working through. I certainly believe that Toni has shared what they know, and I don't know how that impacts the underwriting, but that's the position it puts staff in. And again, we're willing to the underwriting report done, we're willing to do all that stuff.

MR. IRVINE: Well, I think that also -- and Toni can clarify me if I'm off base here -- there's a concern really about communication, generally speaking. I mean, we look to our contact at the applicant as being a clearing point for all information, and to the extent that this took you by surprise when it was your financing partners that provided the surprise is very concerning to me.

MS. JACKSON: And we definitely recognize that. Again, I was and the rest of our team was equally surprised on the public notice because, again, we had talked about something very different.

DR. MUÑOZ: Okay. Thank you.

Again, any other questions from the Board, comments?

MR. IRVINE: I do believe that our general counsel might have some legal advice that he might want to impart in executive session, if you're interested in hearing that.

DR. MUÑOZ: Then we will table this.

MR. GANN: Do you need a motion to table? I so move.

MR. GOODWIN: Second.

DR. MUÑOZ: There's a motion to table, Mr. Gann, second by Mr. Goodwin. All those in favor?

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: Okay. This item is tabled.

Thank you, Brent.

MR. IRVINE: Ready for me?

DR. MUÑOZ: Always ready for you.

MR. IRVINE: Okay. This next item relates to just a discussion, it's not an action item, it's a discussion, and it relates to things that are occurring in syndication markets. As you've already heard in previous Board meetings, the significant uncertainty injected by the possibility of tax reform is having an impact on the prices at which deals are syndicating. The 2016 deals that were priced in some pretty aggressive times in terms of pricing, we're now seeing some adverse swings. We've heard of a couple of deals that may possibly be returning, heard of a few deals that went ahead and closed because they'd already been sold into funds, but we're hearing a lot of people just sitting on the sidelines with the belief that they have a significant gap that will need to be covered.

Obviously, a gap can only be covered by so many different things. From a financing perspective, the most likely source would be loans or assistance from the Department, either under the HOME program or under our TCAP repayment funds. Those are limited resources, and we've got in any given cycle 60-plus deals that have some of these issues, and we would anticipate that a significant number of them would need these funds.

To the extent that HOME funds are the only available funds, there's a problem there because we are statutorily precluded from using HOME funds in participating jurisdictions except for the 5 percent that's allowed to go into PJs. So big challenge there.

Unfortunately, that's not the only challenge. In some of the really active markets we're experiencing price increases, material and labor cost increases. You know, you get a hot market like Austin or Houston where people are building like crazy and that goes to the bottom line.

And then you're also experiencing some uncertainty in interest rate markets, you've got the Fed considering additional rate movement in the near term and that does affect lending pricing.

So you've got your three financial drivers on these deals all experiencing, to some degree, pressure and uncertainty.

As regards our tools to address these things, I did indicate that we do have HOME funds and TCAP loan repayment funds that we are willing to consider putting those in to fill gap, but there are other priorities in existing NOFAs and so forth that are seeking these funds. Some of these deals, like supportive housing deals, really only work with significant assistance from the Department. Bond deals are typically going to be targeted for assistance from the Department. So a lot of pressure to use precious little funding availability.

As regards some of the more creative solutions that we've encountered, we've heard of other states, most notably California, looking at sort of a multiple round structure. We really do not have the ability under our statute. Our statute lays out exactly how our tax credit round occurs and it's basically that March 1 to end of July cycle every year. So at least, within the current year there isn't the possibility of something like a re-application or a process for providing additional credit to these deals.

We also have the fact that our current rules have a force majeure provision that would allow changes in laws as a possible force majeure event, but mere uncertainty in markets would not, in our estimation, constitute force majeure under our current rule.

So we're kind of hamstrung at the moment. You know, we've had a lot of really good discussions with Bobby Bowling and some of the other folks from the development community. And I see Bobby sitting in the front row, which probably means he's ready to come up and say something.

DR. MUÑOZ: Bobby ready to say something? Okay.

(General laughter.)

MR. BOWLING: Surprise, Mr. Chair. I'm Bobby Bowling. I'm currently serving as the president of the Texas Affiliation of Affordable Housing Providers, and I'm also a builder-developer from El Paso.

Yes, we have, as an industry group at TAAHP, had several discussions with your executive director and his top management staff. It is still kind of a changing environment out there but there is starting to be a little bit of certainty injected. Some of the major industry players have kind of laid out some pricing options and they're starting to take some assumptions about what the tax rate will be set at corporately, which is, of course, what threw the whole industry into flux.

Like Tim said, there are a lot of different things that a lot of different states are doing, some of them very creative and aggressive. Our statute, as Mr. Irvine said, precludes us from doing a lot of those things.

I did want to bring your attention, in an educational kind of manner, something that I learned from our last discussions with your staff. I think I've done 30 deals at this point, 9 percent deals, and I've been in this industry for 17 years now, and you still learn things about this industry and in your rules. There's Rule 10.405 which is in Title 10, Subchapter E, and I know you have, I think, 936 pages to read already in preparation for this meeting, but it did me some good, as an experienced developer, to read this section. It's only five or six pages, and it talks about amendments and extensions, and you do have some tools, as staff made us aware at the last meeting, to deal with some things, including material amendments to prior applications, post-award, prior to 8609 and prior to land use restriction agreements being filed, you still have some tools and your staff does.

So I think it might be -- and we need to do a better job at TAAHP of informing awarded developers in 2016 to read these rules and to avail themselves of these tools. Your staff has told us time and time again -- I think we've had three or four meetings on this -- that they're just not seeing a lot of awarded developers from 2016 coming forward and saying, Look, this is my deal and it doesn't work and this is why. Now, I told your executive director that's because developers are eternally optimistic and we don't think our deals are really in trouble ever, so there is that.

But I think if there was a little bit of outreach both from our organization and yours to these 2016 developers, maybe outreach in the effect of TDHCA -- you know who they were, you awarded them the awards -- and just kind of reach out and say: We're interested to see how your deal is going, if you've got problems, remember there's 10.405 here. And I want to inform you as a Board, I think as the dust starts to settle, you'll probably start seeing some of these appeals.

In this chapter there's very few things that can be done administratively that are material amendments, almost everything has to come to the Board. There's some flexibility on some things scoring-wise as long as the applicant doesn't drop his score to a point where someone behind him would have gotten awarded, if you follow what I'm saying. Like if you won by six points, there is some flexibility here in the rule to drop two points or four points with Board approval to show that the deal is not feasible otherwise.

Now, there are a lot of deals that are close, mostly like in the bigger cities and the medium size cities, you know, Dallas, Houston, Austin, and then you go to San Antonio, El Paso, the medium and big cities are pretty close and they could probably work with a small tweak. I think, unfortunately, some of the smaller rural deals and some of the deals around the state, I think they have huge gaps. They can go and apply for HOME funds. I want to advise too, though -- and God bless staff trying to look at all the tools in their toolbox -- but with HOME comes some transactional costs as well, you have Davis-Bacon that you have to interject now if you access HOME funds. So like for my own personal deals, the tradeoff is not really worth it to go and access those small amount of funds and increase my transaction costs, my development costs.

Also, the longer we drag on, of course, prices are always increasing in our industry, and so time is kind of of the essence, or it definitely is of the essence always on these deals.

So I appreciate this item being posted. We're going to probably keep coming to you and trying to inform you as to what's going on in the marketplace. I don't really have like a great suggestion for you or a great solution, and I appreciate continuing meetings with your staff that our industry has been invited to. And we're just here, if you have questions, please reach out, use us as a resource. Your staff is already doing so.

But again, I wanted to advise you that I think now that the dust is starting to settle, you might start getting some developers come, because the way the staff has laid it out is: come to staff with your 2016 deal, show what your new financing is, show what your new equity price is, show us your gap, and start trying to work through it on a case-by-case basis with staff.

DR. MUÑOZ: I'll just make a few comments and I'll invite the Board to make any comments they'd like. I appreciate your observations, Bobby. It seems that if there's a way for developers and projects to get worked out with staff in advance of this kind of environment, it seems to be generally more beneficial for all involved.

But I have another question. You talked about the importance of specifically communicating this rule 10.405. I know that we have a number of activities to interact with the development community, support communities, et cetera. Is that an effective mechanism, is that an effective conduit? Should they specifically emphasize this rule or something else in order to sort of preemptively bring this particular administrative resource to the attention of 2016 deals?

MR. BOWLING: I honestly, Mr. Chairman, think that if the Department would reach out to each of the awarded developers and just make them aware, send them a link to this rule. Because I can speak to myself personally, after the last meeting we had, I went back and I read this 10.405 and it got my wheels started turning, it started giving me some ideas of how to tweak my deal a little bit or how to propose tweaking my deal a little bit to staff. And then the parameters are there, so I'm not starting really with a blank page, there's kind of some rules and there's some four corners to the piece of paper where you start on and you go, okay, let me see if I can operate within these parameters.

Like I said, maybe some of the deals can't, but to the extent that they can, I agree with you, this process operates much smoother when a developer and staff can come and have a recommendation before you.

DR. MUÑOZ: I want to underscore your point of operate within these parameters.

Any other comments from the Board?

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

I echo your sentiments also, just really have a lot of gratitude that staff and the developer community are coming together trying to figure this out, because it would be sad to know that force majeure probably wouldn't happen until something disastrous happens and then everybody looks back and says force majeure.

And I think your point also is in looking at that 10.405 that there's a point of no return. Right? That as you're moving your project through, whether it's the LURA or whatever, there are some options that might be available to you guys but there will come a time when you're so far down the path with certain activities that those options aren't available anymore. So I'm thinking that's your point about trying to get that out there, not that it's a magic solution but just that if any developers are going to invoke some of those provisions that they'd have to know it ahead of time so that they don't go past the point of no return.

And then, of course, my other observation is just the thought of being in a perpetual cycle just administratively, knowing that as folks invoke that and we're all here to accomplish the same thing, but what an administrative and manpower toll that takes to just have all kinds of deals at different places invoking those provisions. It's just something that I'm sure Tim and his staff will want to think through about how much resource do they have this year to be able to maneuver and accommodate that given that we already have what we have, right, in terms of budget for this year, in terms of manpower and whatnot.

But I really appreciate the effort that TAAHP and that the staff have given to try and problem-solve some options this year.

MR. BOWLING: Yes, ma'am. And you're exactly right, the next deadline that's coming up for us as developers is the 10 percent deadline, so I think it might be beneficial for maybe TDHCA to send out a message: Remember 10 percent is coming up; if you're still uncertain about your deal, there's these remedies and there's some penalties and some ramifications for not making your 10 percent test.

DR. MUÑOZ: Everybody appreciates your guidance. Thanks, Bobby.

Any comments or questions from the Board?

MR. BOWLING: We would wish that a lot of this stuff could be done administratively but per our statutes and our rules, they're going to have to come before you all.

DR. MUÑOZ: Thank you, Bobby.

MR. BOWLING: Thank you.

DR. MUÑOZ: That was just a report item?

MR. IRVINE: That was just a report item. I would also make a request to everybody, if you've got specific things that you think we ought to bring back to the Board at a future meeting to provide greater clarity on any of these issues, that would be wonderful. 10.405 being applied to a deal that is pre-8609 does raise some pretty tough policy questions.

MR. BOWLING: Thank you. And congratulations, Mr. Chair.

(General laughter.)

DR. MUÑOZ: I'll let you know.

MS. BINGHAM ESCAREÑO: Awesome timing.

DR. MUÑOZ: Thank you.

Moving on to item 5, Raquel.

MS. MORALES: Good morning. My name is Raquel Morales. I'm the director of the Asset Management Division.

And I just kind of want to briefly touch upon something that Bobby just mentioned, since 10.405 was brought up. That's the asset management rule, it's the amendments rule. We work a lot with our owners whenever they have changes, and certainly under the current conditions we have done what we can to, I guess put the word out about the rules that are there, and we're certainly willing to work with any owner, 2016 or prior, and any time they've received award to work through their deals and whatever situations that they're dealing with.

So if there's more discussion about that, just call me. Everybody knows our number and we're willing to work with owners on that.

Item 5(a) is presentation discussion and possible action regarding amendments to HOME direct loan terms for two separate transactions. They're both under 5(a) and at a 30,000-foot level their requests are the same but these deals are very different and so they warrant a different recommendation from staff, so I'll kind of go into detail about each of those.

But just kind of start off the conversation, as you all know, we at the Department have been awarding funds to deals using our HOME Program, and have provided those funds in the form of loans for the purpose of being able to recycle that money and have an ongoing subsidy to fund future affordable housing deals throughout the state, as well as having a source to offset any potential liability to HUD for those HOME funds in the case that something is not performing as we expect and hope that it would.

The income that's generated from our HOME multifamily activities has increased over the last four years as a result of structuring these awards as direct hard pay loans, and so just in the last two fiscal years the Department has generated about $9 million in each of those two fiscal years, $9 million available to fund future deals. Especially with the scarce resources of tax credits, obviously not enough tax credits to go around and fund every deal that submits an application, so these monies help to do that.

Our rules on NOFAs have consistently been applied with that philosophy. TDHCA direct loans are typically underwritten and structured as subordinate hard debt loans at interest rates that are lower than what an owner might be able to obtain in the market for similarly positioned mezzanine debt.

Our rules also include special accommodations where there is a first lien FHA or HUD loan. For example, one of the accommodations that our rules currently include is that we can extend our maturity to match that of the first lien FHA or HUD loan, or at least be within six months to match that.

Another accommodation is that our subordinate HOME loan repayment on that subordinate loan can be structured as a cash surplus soft debt versus a hard debt.

Our rules that are in place now, and have been for a while, as an attempt to address what HUD included a couple of years ago in its Multifamily Accelerated Processing Guide, or what we refer to as its MAP Guide. That MAP Guide sets forth the requirement that any subordinate debt would have to be structured as soft debt and payable out of surplus cash. Again, that's why we have that accommodation in our rules in place.

However, the MAP Guide further restricts that repayment on any subordinate debt should be limited to only 75 percent of surplus cash, and the remaining 25 percent of cash flow that's generated by a property would go back to the owner. This has the effect of prioritizing a return to the owner ahead of a return to paying off our loan, the Department's HOME loan, and this places the Department at a higher risk should a development not perform as we would expect. We do, to the best of our abilities, underwrite and obviously to recommend a deal that's going to be feasible for the long term, but you can't predict the future, so putting a higher debt on top of our HOME loan, higher debt service, it does put the Department at more risk.

This provision, the 75 percent restriction on the cash flow, that is in the MAP Guide and has been for some time, has not previously been enforced by HUD when it comes to deals that we are partnering with HUD with.

In the first of the two transactions before you today, Pine Lake Estates, the owner is applying for a new first lien through HUD's demonstration program known as the 223F Pilot Program, and it's our understanding that this pilot program required an underwriting and subordination document review to be approved at the HUD headquarter level in Washington, D.C. versus being reviewed and approved at the HUD local level, which they usually are. The HUD D.C. office, in the Pine Lake Estates transaction, is providing no waiver or tolerance for exempting the 75 percent cash surplus condition, and that's the first time since we've been doing deals with HUD that this is the case.

The other transaction that's on the agenda, Sunrise Townhomes, is applying for a first lien through a different program, not the pilot program, but it is our understanding that the decision on the waiver of the 75 percent cash restriction was also taken to HUD D.C., as opposed to being reviewed at the local level --

DR. MUÑOZ: Let me interrupt you.

MS. MORALES: Sure.

DR. MUÑOZ: Can you go back to that last point you made, saying this is the case, this is the first time that they've enforced? I want to make sure I understand you correctly.

MS. MORALES: Right. So we have closed on several transactions where a HUD or an FHA first lien is introduced, we have a HOME loan subordinate, and in all those prior cases we have closed successfully and HUD has not enforced the 75 percent cash surplus restriction. That item has not been enforced in our documents, in our closing documents and the subordination agreements. I understand that those are typically waivers that are requested ahead of time before they come to us by the lender and typically, at the local level at least, approved. In these two cases, the requests for that waiver have gone to the D.C. office and the D.C. office is not providing an exemption or a waiver of that.

DR. MUÑOZ: Not.

MS. MORALES: Is not.

I have tried to reach out to our local HUD offices, as well as to the person in D.C. that we were corresponding with with respect to the Pine Lake transaction to get some kind of a feel if this is going to be a change in their position, in their direction moving forward, again, because it's not something that they've enforced previously, and unfortunately, I've not been able to get any confirmation, I haven't been able to get in contact with them to get any feel for what's going on and if that's going to be a change.

Needless to say, if this is how HUD moves forward on that particular MAP Guide condition, it will impact how we participate as a Department in these transactions moving forward, and if we do, how we participate in those. As I said, we have in prior cases brought requests like this to you for approval, typically with a recommendation, because we have under our rule interpreted surplus cash to mean 100 percent, not some lesser percentage, not 50 percent, nothing else, and HUD has been okay with that interpretation.

So at this point, this is about where the similarities for the two transactions really end is that their ask is the same and they're asking us to resubordinate our HOME loan, they're asking us to restructure our current hard debt HOME loan to a soft debt structure, and in both cases the 75 percent restriction on the cash flow to go towards repaying our loan is being asked to be accepted by the Department.

I'd like to now go ahead and start talking about the detail of each because, again, while at that level the requests are the same, the transactions are very different which is the reason why you have different recommendations from staff on each.

So the first transaction I'll discuss is Pine Lake Estates. That development received 9 percent housing tax credits, as well as an award of HOME funds to rehab 100 multifamily units in Nacogdoches back in 2013. The HOME funds were awarded and are currently structured as a direct loan in the amount of $806,754, it is secured by a second lien on the property, it has a zero percent interest rate, 30-year amortization and 15-year term. All of these terms were consistent with the terms of the NOFA at the time of the application.

At the time that we closed on the HOME loan, the Department reviewed the financing structure, which we typically do at the time of HOME closing, and the financing structure included a first line of $2.25 million, 30-year amortization, 15-year term, a 5.75 interest rate, and that is currently what the current mortgage is for Pine Lake Estates. Rehab has been completed, they just went through the cost certification review process and received its IRS Forms 8609s for purposes of the housing tax credits. We just issued those in December of last year.

So during our cost certification review, we looked at their transaction under two scenarios. We looked at it as is under the current mortgage, and it's feasible, it works, it is operating largely as we anticipated. And we also looked at it with the new proposed first lien. The new loan is proposed to increase by about $747,000. They are getting a lower interest rate on their first lien and an extended 35-year amortization, but because it's a higher loan amount, they're taking cash out, the debt service in front of our debt service is still higher.

A couple of things to note with the Pine Lake Estates transaction. Construction costs did increase from the time we last underwrote or reviewed this which was at the HOME loan closing stage. The developer fees also increased, from what we could tell in the cost certification from the information that was submitted to us, however, based upon the current structure and those final costs that were certified to us in its cost certification, there was sufficient sources to cover this deal, to cover the costs that were certified, and it underwrites within the Department's guidelines. Again, it is not in any type of financial distress, there is no indication at this point that this deal, if it doesn't go through this refinance, will suffer economically as far as operations aren't supporting the expenses for this deal.

The real difference in the current structure for this deal and the new structure is that under the current structure there's about $790,000 in deferred developer fee that if closed on the new loan would be paid out to the developer and that would be reduced to about $45,000 or right under $45,000 of deferred developer fee.

The NOFA in effect that the time that this owner applied for HOME funds references direct loan requirements at 10 TAC 10.307, which again provides for debt service subordinate to a FHA or HUD loan to be payable from surplus cash. Staff has interpreted the plain meaning of this rule to mean that all surplus cash, 100 percent would be available to pay towards our debt, towards our HOME loan.

The owner's representative -- which I believe Ms. Bast is here to speak on behalf of Pine Lake Estates -- did provide a letter that was included in your Board book supplement, and makes the case that the direct loan rule is inconsistent with this federal program, that the Department must have known that HUD meant that 75 percent of the cash flow would be available to fund any subordinate debt service, and that perhaps it is in conflict to how we are interpreting our rule, how we are closing on this transaction.

Yes, the Department is aware of the MAP Guide, it's been out there since 2011, we are aware of that restriction, but again, we have successfully closed on transactions where this restriction has not been enforced by HUD.

And so with that, we are not recommending the requested modification for the case of Pine Lake Estates. We have approached the owner, the owner's lender, as well as their counsel, Ms. Bast, that under the transaction for Pine Lake Estates that the owner just pay us off through this refinance. Their higher loan amounts to about 93 percent of the outstanding balance of our HOME loan. We looked at the cost certification, which was the most recent time that we evaluated this deal. Again, as is, it's fine, it works and it's underwriting within DSCR, it also works with the refinance but it would work as well if the owner were to take out the funds to just pay off our debt and there would be no question about having to re-subordinate, there would be no issue with the 75 percent cash surplus restriction. So staff is recommending denial in the case of Pine Lake.

DR. MUÑOZ: Okay. Thank you, Raquel.

Are there any questions from the Board, or a motion? We're going to take these as two separate.

MS. BINGHAM ESCAREÑO: I move staff's recommendation.

MR. GANN: Second.

DR. MUÑOZ: Ms. Bingham makes a motion, seconded by Mr. Gann. All those in favor?

MR. IRVINE: Wait. Public comment.

MR. DEYOE: Good morning. Thank you for having me. My name is Rick Deyoe, president of Realtex Development Corporation. We're the developer and also the general partner associated with the project.

I wanted to give you a little history about the project and also talk about why we're going for the HUD loan in this particular instance versus leaving the project as is. The project originally, if you look back through the numbers -- well, first off, the project is 100 units senior, a rehab of senior housing and for those that are disabled. The project has always had a HAP Section 8 contract, so it's always been a HUD-related facility, and we extended that HAP for 20 years, so it has a HAP contract in existence.

We went in and at initial underwriting the project cost was $9,507,000, or call it $9.5 million. As Mr. Irvine mentioned, over the course of the last couple of years, cost increases have been as much as 10 percent per year. This was a 2013 project, application submitted in January of 2013, final application in March of 2013. Because it was a HUD rehab, it took a little bit of extra time although we did finish within the time frames of the requirements, but we had to do what's called a rolling rehab here because there wasn't 100 places to relocate 100 seniors in Nacogdoches, Texas, so we had to do this project in phases and move the senior citizens around, and we did that.

Nonetheless, over the course of the last two years, the cost of the project went up to $10,479,000. That's the cost-certified number that was approved by

TDHCA. So we had roughly a million dollar cost increase, or about 10 percent over the two-year period.

How was that 10 percent made up? The staff mentioned it's still covered within the sources and the uses. We had to make up that million dollars by the contractor taking less profit, by us deferring 100 percent of our developer fee, and by the equity partner stepping up to the plate and adding another $200,000 in equity to the project, and that's exactly how the million dollars was made up.

And so the original permanent loan that was mentioned in staff's writeup was actually the construction loan. The construction loan we took out was a $2,250,000 construction loan and it was at a 4 percent rate, and then that rate, we had the ability to convert to a permanent long-term facility at 5.75 percent, although that was never the intent. Community Bank of Texas which is a local community bank that made the construction loan and they're not in the business of making long-term financing on affordable housing type facilities, and therefore, there was no prepayment penalty that went along with that loan. It was always the intent that we would put more typical type of long-term debt on this particular property.

And so we went to Lancaster Pollard once we finished the project, knowing that we had a million dollar increase in cost, we were going to try to recoup some of that cost in better loan terms, and so we were able to get it through the HUD system with a 4 percent rate versus the 5.75, and with a 35-year term versus the 30-year term, and essentially the same economics to the agency as existed previously.

And so what we're proposing is there's really no real no significant economic change to the terms of the HOME loan, but in fact, we just want to finance the additional construction cost. I would submit to the Board that had we known the cost was $10,479,000 and submitted this project with a $2.2 million permanent loan and the equity as it is structured and a 100 percent deferred developer fee, the project would not have passed underwriting, and so that's the reason that we've requested as we have.

All we're asking for here is that the 75 percent --

DR. MUÑOZ: I'm going to ask you to bring your comments to a close.

MR. DEFOE: Okay. All we're asking for here is the 75 percent rule that HUD mandates to be taken into consideration. Thank you.

DR. MUÑOZ: Any questions?

(No response.)

MS. BAST: Good morning. Cynthia Bast of Locke Lord representing the borrower.

I would like to address the legal authority issues associated with this request, which I believe perhaps did not come through in the Board action request as vividly as I would have liked, but were referred to by Ms. Morales in her comments.

The bottom line here is that both federal law and state law support you approving this request and perhaps even mandate your approval of this request. And where I start is in the Government Code where it says that TDHCA is required to administer its multifamily programs and funding cycles consistently with federal law.

So the federal law we're talking about here is the law promulgated in association with FHA mortgage insurance, where the regulation in the Code of Federal Regulations says that subordinate liens are prohibited, except in certain conditions and then only to the extent they're repayable from surplus cash. So under that applicable statutory and regulatory authority, HUD promulgated the MAP Guide which is intended to provide lenders across the country with a consistent set of rules for how they prepare and submit applications for mortgage insurance.

And if you look at the MAP Guide, the MAP Guide specifically recites the federal authority under which it is promulgated. As noted, that MAP Guide has been in place since April 2011, and states that payments on these subordinate loans should come from 75 percent of surplus cash.

So against this federal law and state law requiring programs be administered consistently with federal law, TDHCA developed a rule about direct loans and how they are handled in the case of a FHA first lien, and the rule says that when a HOME loan is subordinate to a FHA-insured loan, the Department may approve a loan structure with annual payments payable from surplus cash. It doesn't say 75 percent of surplus cash, but it also doesn't say 100 percent of surplus cash, it only says payable from surplus cash.

And it is reasonable to assume that at the time this rule was approved, TDHCA knew, as Ms. Morales indicated, that the MAP Guide said that subordinate loans, when there's a FHA first lien, should be paid from 75 percent of surplus cash, and it doesn't matter that HUD had not been enforcing that particular provision of its guide. With all due respect, if you all had a rule on the books that you weren't enforcing and then I came to you and said, well, you haven't enforced it before, why are you starting now, you would say Ms. Bast, the rule is on the books, you know it's there and you must anticipate accordingly.

So we believe that interpreting the phrase "payable from surplus cash" can mean payable from 75 percent of surplus cash to be consistent with the federal law as required by TDHCA's overlay.

So taking the next step, the direct loan rules do allow loan terms to be amended post-closing, and in the Board action request, staff has noted that mitigation is an important factor, mitigation of risk is what they consider in amending a loan. And this borrower has provided sufficient mitigation and your staff has recognized that. The Board action request acknowledges our statement that paying this HOME loan from 75 percent of surplus cash has no material economic consequence for this development and no material risk for TDHCA. In the Board action request, staff said this contention is true. That should be enough.

But this borrower has offered further mitigation, which was also not covered in your Board action request. This borrower has said, We'll set aside a reserve of one year's worth of HOME loan payment so that that is dedicated, if there's a problem with cash flow, that will be available. This borrower has also said that to the extent the developer is entitled to that 25 percent of cash flow, that the developer will pledge that amount to TDHCA to cover any shortfall on the HOME loan payment. So doesn't that put TDHCA in effectively the same position?

Quite simply, we believe that approval of this request is consistent with federal and state law. You don't need to twist or waive any rules to approve this. You just need to interpret them in a manner that is consistent with your statutory mandate. But if for some reason you think that the interpretation can't get there, then I believe you firmly have grounds for a waiver as well. A waiver requires you to find that there were circumstances beyond the owner's control. You have heard the testimony from Mr. Deyoe about the overruns that were widely experienced across the industry. Further, waiver must be necessary to fulfill some requirement of law, and again, we argue that your state law indicates that your program should be administered consistent with federal law.

So for all those reasons, we respectfully request that you grant the borrower's request to amend the HOME loan. Thank you.

DR. MUÑOZ: Just a minute. Are there any questions from the Board?

(No response.)

MR. SHACKELFORD: Mr. Chairman, members of the Board, John Shackelford with Shackelford Law Firm. I represent the lender in this case, Lancaster Pollard.

Sort of take a little bit different approach from Ms. Bast, and that is from the lender's perspective, being a HUD lender -- and our firm represents a couple of HUD lenders -- our concern is a bigger issue for the Department and that is what are we telling the development community in connection with the 2017 applications that they're filing tomorrow if they're looking at FHA financing. Because, as Ms. Morales said, historically HUD has granted this waiver to the State of Texas, Lancaster Pollard does deals in many states around the country, and no other state asks HUD to grant these type waivers.

Texas has been fortunate that in the last several years HUD has granted the waivers, and now from our view, both on this transaction and the next transaction with Sunrise, it appears that Washington is taking a different approach about granting these waivers. They came out with a new MAP Guide back in April, these things started surfacing back last fall, and they went to D.C. as opposed to being approved at the local level, and so our concern is that D.C. has now taken a position that, you know what, we're going to make this uniform across the country, Texas has been getting these waivers and we're not going to grant Texas these waivers any longer.

And so if that's the case, then going forward for the 2017 program, in addition to our deal that we're involved for Pine Lake and then also for Sunrise, that you're telling the development community, if staff keeps with their interpretation that it's got to be 100 percent of surplus cash as opposed to 75 percent mandated by HUD, you've just taken one of the financing vehicles available to the development community. They can't do FHA financing because those waivers won't be available in the future.

And I also want to remind you that Freddie Mac and Fannie, both at the same time, they too have this 75 percent requirement. That's it.

So from a lender's standpoint, we're concerned from the overall health of the program on being able to be involved in deals going forward, so I bring that to your attention for consideration as looking at it as not just this isolated deal and what the ramifications are for this particular developer on this one particular transaction, but overall I think, as Ms. Morales said, it's an interpretation issue of your rule. Staff has been interpreting it for the last several years that it meant 100 percent; I agree with Ms. Bast the rule doesn't say that it's 100 percent, I think that was more of a source of repayment for the Department where the money would come from. So I don't see where the rule necessarily mandates that staff interpret it as 100 percent cash flow, I think it has to be melded with the federal law which is 75 percent.

Now switching over a little bit beyond the program, on this particular deal the risk to the Department, I think, is so minimal. As Ms. Morales said, this is a pretty healthy deal. Even the staff's underwriting shows that with this additional loan and your HOME loan out there, it has a DSCR of 1.47. From our underwriting standpoint with the lender, it's 1.53. That's a very healthy deal, for you that are familiar with finance.

Also, as Ms. Bast put in her letter to the Department seeking approval, she shows the developer can pay the debt service on the HOME loan out of only 30 percent of the surplus cash. So the whole issue over 75 percent and 100 percent sort of becomes irrelevant because this project, with how well it's doing, can service the debt out of just 30 percent of the surplus cash. So I want to bring up those points to you.

And the other thing is, again what makes, I think, this a stronger deal is you've got a tax credit investor in the deal. Sunrise -- which I think their deal ought to be approved and staff is recommending it for approval and I totally agree with that, that deal is a totally HOME loan deal, has no tax credit investor in it. This deal has a tax credit investor in it, which there's no guarantee, but in the real world practical sense, they're going to backstop anything.

And then finally, as Ms. Bast mentioned, the lender is totally acceptable to the developer either putting up a reserve to credit enhance this project, or to pledge the GP's take on the additional cash flow, that 25 percent of additional cash flow that the developer would take. We're fine with them pledging that behind this transaction.

Any questions for me?

DR. MUÑOZ: Thanks, John.

Okay. I don't see anyone else.

MR. LACKI: Good morning. My name is David Lacki. I'm the managing director of Lancaster Pollard, representing the FHA lender that, the Ginnie Mae issuer on the Pine Lakes Transaction.

I think my three speakers have done a tremendous job. I just did want to mention that from HUD's perspective, as well as Fannie and Freddie, that 25 percent interest is an incentive for the borrower to stay involved in the transaction. It's really nothing more than allowing the equity borrower to have an equity interest in that transaction.

And going along some of the comments that Mr. Shackelford made, based on our analysis, we show that paying the HOME loan through that 75 percent of excess cash that that HOME loan would be paid off in six years. So it's a very strong transaction. As Mr. Deyoe indicated, he's only asking for that to handle the cost overruns on the transaction.

So from our perspective as being a lender doing these types of transactions in the entire country and having an office here in Austin, as Mr. Shackelford indicated, we, of course, are concerned as well because it appears that there's a changing of the guard at HUD going through their transformation office, it doesn't appear to me like they're going to be granting these waivers in the future, and then Fannie and Freddie also have that same requirement, so we have concern about the viability to continue to marry agency financing with HOME funding through staff.

And I did want to thank staff's efforts going through this. I think they uncovered blocks, they were very good to work with. I certainly understand, given the constraints that they were working under, how they came to their conclusion.

Thank you.

DR. MUÑOZ: Thank you, Mr. Lacki.

Any questions?

(No response.)

DR. MUÑOZ: Okay. We have a motion --

MS. BINGHAM ESCAREÑO: Mr. Chair, may I ask a question of staff?

If I were to withdraw my motion and if whoever seconded it was amendable, and make a new motion, would we prefer the avenue of request a waiver of the NOFA or would we prefer a request to modify the loan terms?

MS. MORALES: I think their request is to modify the loan terms. I'm not sure that the NOFA can be waived.

MS. BINGHAM ESCAREÑO: I thought that was in our Board book as an option, but it may not have been.

MR. ECCLES: It is in the Board book as an option, however, I'm not sure that staff truly addressed it in the opening comments. The attendant difficulties with the concept of waiving a NOFA provision, it's a bit of a dichotomy legally.

MS. BINGHAM ESCAREÑO: Okay. Thank you.

Mr. Chair, I'd like to withdraw my motion.

DR. MUÑOZ: All right.

MR. GANN: And I'll do my second.

DR. MUÑOZ: Okay. The initial motion and second both have been withdrawn. Is there a second motion?

MS. BINGHAM ESCAREÑO: Mr. Chair, I move to approve the request for modification of the loan terms.

MR. GOODWIN: Second.

MS. BINGHAM ESCAREÑO: May I amend my own motion?

DR. MUÑOZ: Yes.

MS. BINGHAM ESCAREÑO: For what it's worth, I think I would also like to include the provision of setting up, though, the reserve. Was it one year?

MS. MORALES: I think they're required to do that anyway as part of the new financing, which is why we didn't really consider that a mitigation, but if that's acceptable to the Board, that's fine.

MS. BINGHAM ESCAREÑO: Okay.

DR. MUÑOZ: So the motion is to support the restructuring of the loan?

MS. MORALES: It's up to you guys.

DR. MUÑOZ: Ms. Bingham?

MS. BINGHAM ESCAREÑO: Yes, modify the loan terms.

MS. MORALES: And that includes accepting the restriction on 75 percent cash flow that HUD is imposing?

MS. BINGHAM ESCAREÑO: Yes.

MS. MORALES: And again, this is just really from this staff person's perspective, I expect that we're going to get these requests, we're going to continue to get these requests. And given HUD's new maybe change in direction, it would be really good for me to know if that is the direction of HUD moving forward, again, we have interpreted our rule to mean all surplus cash, and are we being specific in this case and you still want to see these types of requests. They're going to come to you, I believe, just because they're going to be evaluated on a case-by-case basis.

DR. MUÑOZ: Let me exercise some discretion here. Let's deal with this issue and this project, and those questions I would direct you to take them up your chain of command to the executive director, who will wait for some guidance as to how to manage whether or not those potential requests come forward in the future. I don't want to speculate as to whether they will or won't. But you clearly have some specific questions about it.

MR. GANN: I think if that's the case, can we get on the record that I think one of the keys on this is the short-term payoff on this particular loan is significant, that it's such a short-term payoff.

MS. BINGHAM ESCAREÑO: Thank you.

DR. MUÑOZ: Okay. So there's a motion to grant the restructuring of the loan with the 75 percent cash flow as part of it, and a second from Mr. Goodwin.

MR. GOODWIN: Clarification. I heard you say you were going to also pledge your GP return? Did I misunderstand that?

MR. SHACKELFORD: It was an alternative that the developer offered --

DR. MUÑOZ: Identify yourself.

MR. SHACKELFORD: I'm sorry. John Shackelford on behalf of Lancaster Pollard.

It was either put up one year reserve, which with all due respect to Ms. Morales, is not required, but put up one year reserve, or they would pledge the GP's interest in the additional 25 percent surplus cash.

MR. GOODWIN: Not both?

MR. SHACKELFORD: Not both.

DR. MUÑOZ: Thank you.

Motion and second. All those in favor?

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: The motion passes.

MR. ECCLES: With the condition.

MS. MORALES: So the second transaction under

5(a) is Sunrise Townhomes. Again, the request is similar, they're asking us to re-subordinate our subordinate HOME loan to a new first lien. This transaction is different in that it is a HOME only transaction, there is no other equity other than the owner's own equity in the deal.

Sunrise was awarded in 2013. They were awarded a direct loan of HOME funds in the amount of $1.8 million. It was for the construction of 36 new units in Fredericksburg. The HOME loan is also secured by a second lien on the property, zero percent interest, 35-year amortization, a 15-year term.

When we last evaluated this transaction at HOME loan closing, the first lien was a $1.9 million loan at a 5 percent interest rate. The new loan will increase by $630,000 above our subordinate HOME loan. The interest rate will be reduced and the loan term will be extended to 35 years. The debt service in front of ours will also be increased.

Now, this transaction is different and actually staff is recommending approval of this request for specific reasons, among those, again, that it's a HOME only deal, there is no other equity other than the owner's equity in this transaction, construction costs did increase over the construction period, but in this case the developer fee did not increase like in the last transaction. The owner has also offered as an extraordinary mitigation to the increase debt in front of ours and the debt service a personal guarantee of the entire direct loan, and so because of that, staff felt comfortable that mitigation was sufficient to garner staff's recommendation of their request to modify their loan terms.

DR. MUÑOZ: Any questions from the Board?

(No response.)

DR. MUÑOZ: I'll entertain a mortgage.

MR. GANN: I move staff's recommendation.

MR. GOODWIN: Second.

DR. MUÑOZ: There's been a motion and a second. Comment?

MR. MacDONALD: Mr. Chair, Board members and staff, my name is Justin MacDonald, president of MacDonald Housing Development, the GP on this transaction.

I think staff laid out the case pretty well in the Board writeup and in their presentation, but I'm here to answer any questions if have them. I've also got Randy Mason from Mason Joseph Company, our lender, available to answer questions as well. But otherwise, I'd just like to ask your favorable consideration.

DR. MUÑOZ: Thank you.

Are there any questions from the Board?

MR. GANN: I'm not used to the MacDonalds coming up here in ties. We'll accept him.

MR. MacDONALD: I just wanted to match.

(General laughter.)

DR. MUÑOZ: All right. I don't see any questions. Thank you.

MR. MacDONALD: Thank you, sir.

DR. MUÑOZ: Okay. There's been a motion by Mr. Gann and a second by Mr. Goodwin to approve staff's recommendation. All those in favor?

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: Hearing none, the motion passes. Congratulations.

Okay. At this time I'd like to take a break. Let's see what time we have on deck; let's come back at 11:00 and we'll reconvene.

(Whereupon, at 10:40 a.m., a brief recess was taken.)

DR. MUÑOZ: Thank you. We're going to reconvene our meeting from break. I will go on the record as noting that my gavel is significantly smaller than J. Paul's. I don't want anything read into that.

(General laughter.)

DR. MUÑOZ: Okay. 5(b), Raquel.

MS. MORALES: 5(b) is presentation, discussion and possible action to consider a waiver of 10 TAC 10.101(b) related to specific mandatory unit amenities for three transactions.

We have three 4 percent housing tax credit deals that were awarded in 2014: Lakes of El Dorado which is 14409 in McKinney, Texas; Fountains of Rosemeade which is 14410 in Carrollton; and Ash Park Apartments which is 14411 in Euless. All of these are in Region 3 which is the Dallas-Fort Worth area.

In their tax credit applications for each of these developments, the rules required specific mandatory unit amenities that are described in 10 TAC 10.101(b)(4), and specifically related to provided Energy Star rated dishwashers and refrigerators in the units. Rehabilitation for all three of these developments, and in the process of compiling their documentation to get ready to submit their cost certification to us, the owner identified that the appliances that were recently installed in these rehab units were not Energy Star rated. Because of that, the owner has requested a waiver to having to provide the Energy Star appliances because they just installed new appliances, even though they're not Energy Star rated.

We went back and did talk to the owner about this request and they were able to provide some additional documentation from their appliance distributor, kind of explaining what happened, why they didn't install the Energy Star rated appliances, and according to that distributor, there were some changes in the Energy Star thresholds during the time that the units were being rehabbed, and because of that, the Energy Star rated refrigerators and dishwashers were not readily available. Also, the owner stated that because the properties were fully occupied at the time of rehab, he was concerned with having timely and consistent delivery of appliances for the convenience of the residents as soon as those units were done with the rehab.

The owner did contact an Energy Star rating lab, a company called Intertek, to compare the models the of the refrigerators and the dishwashers that were installed to the Energy Star thresholds, and that company was able to conclude that based on the energy consumption values for the appliances that were installed that they did meet Energy Star thresholds, they're just not Energy Star rated. And I honestly couldn't speak to how you go about getting an Energy Star rating on your appliance, but at least through this company the owner was able to document that they do meet that threshold.

So the owner is requesting a waiver of this requirement, citing that it would be cost prohibitive to have to go and replace these appliances with Energy Star rated appliances, not to mention they wouldn't know what to do with the new ones that they just installed.

Staff believes that the owner has provided good cause, they've provided sufficient information. If this had come up at the time of construction inspection, the documentation that they provided from this Intertek would have been sufficient to clear that kind of a deficiency, so staff is recommending approval of the waiver.

DR. MUÑOZ: Thank you.

Any questions for staff?

MR. GANN: I move for approval.

MR. GOODWIN: Second.

DR. MUÑOZ: There's been a motion and a second. Is there any comment?

MS. DULA: Tamea Dula with Coats Rose, here for the developer.

We're really only here to answer questions, but I noticed that Raquel didn't mention that the developer has offered to install a thermostat in each of the units in order to assist with the energy conservation in order to get over this issue with regard to the Energy Star rating, and I wanted to make that apparent. Thank you.

DR. MUÑOZ: Thank you.

MS. MORALES: Thank you. And you're right, I did forget to mention that. I also didn't mention that it was part of the owner's request that as soon as these appliances need to be replaced, the owner has committed to replacing with Energy Start rated appliances as needed.

DR. MUÑOZ: Thank you, Raquel.

There's been a motion by Mr. Gann and a second by Mr. Goodwin to approve staff recommendation to grant the waiver. All those in favor say aye.

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: Hearing none, the motion passes.

Marni, 6(a).

MS. HOLLOWAY: Marni Holloway, director of the Multifamily Finance Division.

On your agenda item 6(a), we are pulling that at the request of borrower. They will be bringing forward additional information for us to consider in the future.

If you'd like, I'll continue with 6(b).

DR. MUÑOZ: Yes, please.

MS. HOLLOWAY: 6(b) is presentation, discussion and possible action on revisions to the 2016 State of Texas National Housing Trust Fund allocation plan and directing that it be published in the *Texas Register*.

On September 8 of 2016, you approved the original final version of the allocation plan for submission to HUD. This was a final step before the grant agreement for the annual allocation of the National Housing Trust Fund. That allocation plan was submitted to HUD on September 14. On October 27, HUD disapproved the Department's allocation plan, and as we reported last month, staff has been in communication with HUD, working since that time to draft a plan that will be acceptable.

Through that communication process, staff has concluded that rehabilitation using National Housing Trust Fund is not possible under HUD's current requirements. HUD is requiring that all NHTF rehabilitation units undergo a very specific inspection prior to preparation of a scope of work that addresses all of the items in that specific inspection.

In contrast, for all of our other rehabilitation deals, TDHCA requires a property condition assessment, a PCA, that considers all the facets of the development be conducted by a professional inspector and that the budget for the rehabilitation meet the estimates in the PCA and that the property pass inspection when completed.

So for example, the first page of HUD's

inspection protocol includes a section for parking lots. That section does not include does the parking lot need to be re-striped. So a PCA would pick up a parking lot needs to be re-striped and that would be part of the scope of the rehabilitation.

Because NHTF units are restricted to 30 percent of AMI, they must be layered with other fund sources to be sustainable for their full affordability period. In order for TDHCA to meet HUD's requirements, NHTF units would have a different standard than the other units in a rehabilitation deal. The different standard would make these projects very difficult to manage and further slow the implementation of the National Housing Trust Fund plan.

If HUD should change its rehabilitation standard requirement for future NHTF allocations, staff of course will examine those changes for compatibility with TDHCA policy and may recommend adding rehab back in as an eligible activity at that time.

We have also removed homeownership and refinancing as eligible activities, at HUD's suggestion, as we do not anticipate including them in the NHTF NOFA for this allocation.

We've added some additional information to support the use of the HOME maximum per unit subsidy, at

HUD's request, but that proposed standard has not changed, we've just put in a little more information in the plan.

Because of these changes, the NHTF allocation plan must be published for public comment for 30 days. We will start the comment period on March 1 and anticipate bringing the second final revised allocation plan back for your approval in April prior to submission to HUD. We would also hope to bring the proposed NOFA for these funds to the April meeting in order to expedite awards of the funds as soon as we can get to a grant agreement with HUD.

Staff recommends that revisions to the 2016 NHTF allocation plan be approved for publication in the *Texas Register* and released for public comment, along with corrective edits to the consolidated plan and the 2016 one year action plan. I'll be happy to take any questions.

DR. MUÑOZ: Thank you, Marni.

Any questions?

(No response.)

DR. MUÑOZ: Is there a motion to accept the revisions to the NHTF allocation plan?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second.

DR. MUÑOZ: Moved by Ms. Bingham, seconded by Mr. Goodwin. All those in favor?

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: Hearing none, it's accepted. Thank you.

All right, everyone, give me a minute while I read this. The Governing Board of the Texas Department of Housing and Community Affairs will closed into closed executive session at this time. The Board may go into executive session pursuant to Texas Government Code 551.074 for the purposes of discussing personnel matters, pursuant to Texas Government Code 551.071 to seek and receive the legal advice of its attorneys, pursuant to Government Code 551.072 to deliberate the possible, sale, exchange or lease of real estate, and/or pursuant to the same Code to discuss issues related to fraud, waste and abuse with the Department's internal auditor, fraud prevention coordinator or ethics advisor.

The closed session will be held in the anteroom of this room, the Rick Williamson Hearing Room in the Greer State Highway Building. The date is February 28 an the time is 11:12, and we will reconvene from executive session at 11:30.

(Whereupon, at 11:12 a.m., the meeting was recessed, to reconvene this same day, Tuesday, February 28, 2017, following conclusion of the executive session.)

DR. MUÑOZ: Thanks, everyone. We're going to reconvene. The Board is now reconvened in open session at 11:30. During the executive session the Board did not adopt any policy, position, resolution, rule, regulation or take any formal action or vote on any item.

I'd like to invite Brent back up to the podium, and ask if any further discussions have been had related to the Fenix project.

MR. STEWART: Yes, sir. We've had some conversations, we've received some additional information. We believe we can finish the underwriting report fairly quickly. The applicant has agreed that the next Board meeting, March 23, given that we've got a way to get there, that they've agreed to go on the 23rd for approval.

MR. IRVINE: So we basically finish up our underwriting as quickly as we can, take it through EARAC as quickly as we can.

MR. STEWART: That's right. The EARAC approval would be very important for them in terms of proceeding, knowing that that decision has been made one way or the other.

MS. BINGHAM ESCAREÑO: Mr. Chair, I would move then to further table this item until the next Board meeting, with the understanding that it will go through the underwriting process and the EARAC process.

DR. MUÑOZ: Okay. There's a motion to continue to table this item until our next Board meeting. Is there a second?

MR. GOODWIN: Second.

DR. MUÑOZ: Second by Mr. Goodwin. Any additional questions?

(No response.)

DR. MUÑOZ: A motion has been made to continue to table this item until our next Board meeting, seconded by Mr. Goodwin. All those in favor signify by saying aye.

(A chorus of ayes.)

DR. MUÑOZ: Opposed?

(No response.)

DR. MUÑOZ: The motion passes.

All right. We're at the conclusion of our agenda and so we'd like to invite anyone that would like to offer any kind of public comment that might be incorporated or considered at our next Board meeting, please come up.

Mr. Executive Director?

MR. IRVINE: I just have one item. I really appreciate the two applicants that came up and provided information regarding the subordinate debt structure issues, and we will work to dig in and further refine our understanding of this and the way that our state statute and our state rules intersect with the HUD MAP guidance, which actually, I don't think is either a statute or a rule, it's just guidance. But we'll try to reconcile those issues and bring back our thoughts as to how the Board might refine its policy on the handling of these matters going forward.

DR. MUÑOZ: Thank you, Mr. Executive Director.

Board members, any final comments, observations, affirmation, congratulations?

MR. IRVINE: Good job.

(Applause.)

DR. MUÑOZ: Okay. Well, I'll just conclude with just few comments and remind us of our former chairman, J. Paul. It's a good thing that we do and it's a difficult thing, and we appreciate everybody's patience and insights and professionalism. We are all committed to the same principle and to affirmatively advance affordable housing for Texas, and so we do that with a great deal of integrity and character, and we all appreciate all of your work.

And so unless any other comments, we're adjourned.

(Whereupon, at 11:34 a.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: February 28, 2017

I do hereby certify that the foregoing pages, numbers 1 through 86, 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.

/s/ Nancy H. King 3/6/2017
(Transcriber) (Date)

On the Record Reporting
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