TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

June 30, 2016
9:03 a.m.

MEMBERS:

J. PAUL OXER, Chair
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

ON THE RECORD REPORTING
(512) 450-0342
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ON THE RECORD REPORTING
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g) Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit Application
13187 Barron's Branch Waco
14069 Live Oak Trails Austin
15306 Altura Heights Houston

h) Presentation, Discussion, and Possible Action regarding an additional Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49
13042 The Cottages of South Acres Houston

HOME PROGRAM
I) Presentation, Discussion, and Possible Action to authorize the issuance of the 2016 HOME Investment Partnerships Program ("HOME") Notice of Funding Availability ("NOFA") for Single Family Non-Development Programs, and the notification of the posting of the NOFA to the Departments website and in the Texas Register

COMMUNITY AFFAIRS
j) Presentation, Discussion, and Possible Action on the Section 8 Program 2017 Annual Public Housing Agency ("PHA") Plan for the Housing Choice Voucher Program

RULES
k) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions, and directing that they be published in the Texas Register

l) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.19 Income Eligibility, and directing that they be published in the Texas Register

m) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 20 Single Family
Programs Umbrella Rule, §20.15 Compliance and Monitoring, and 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101 Purpose and Overview, and directing that they be published in the Texas Register

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Quarterly Report on Texas Homeownership Division Activity

b) Status Report on Compilation of Agency Legislative Appropriations Request for SFY 2018-19

ACTION ITEMS

ITEM 3: FINANCIAL ADMINISTRATION

a) Presentation, Discussion, and Possible Action on the FY 2017 Operating Budget

b) Presentation, Discussion, and Possible Action on the FY 2017 Housing Finance Division Budget

ITEM 4: MULTIFAMILY FINANCE

a) Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-018 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority and Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics for Piney Woods Village (#16608) (PULLED)

b) Presentation, Discussion and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#16406 New Hope Housing at Reed, Houston)

c) Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds (#16400 Acme Road Apartments, San Antonio)
d) **Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer** (PULLED)

16411 Chas E Graham Apartments El Paso
16412 Rio Grande Apartments El Paso
16413 Judson Williams Apartments El Paso
16414 Father Carlos Pinto Memorial Apartments El Paso

e) **Presentation, Discussion, and Possible Action on Timely Filed Scoring Notice Appeals under the Department’s Multifamily Program Rules**

16001 Rolling Hills Fredericksburg

f) **Presentation, Discussion and Possible Action on Staff Determinations regarding 10 TAC §10.101(a)(3) related to Undesirable Site Features and 10 TAC §10.101(a)(4) related to Applicant Disclosure of Undesirable Neighborhood Characteristics** (PULLED)

16200 Kirby Park Villas San Angelo
16274 Rockview Manor Fort Hancock

g) **Staff will present a summary of Determinations under 10 TAC §11.10 of the 2016 Qualified Allocation Plan related to**

16012 Mariposa at Clear Creek Webster
16026 Laguna Hotel Lofts Cisco
16029 Baxter Lofts Harlingen
16057 Silverleaf at Mason Mason
16071 Bluff View Senior Village Crandall
16117 Indian Lake Apartment Homes
16118 The Standard on the Creek Houston
16161 Elysium Park Austin
16164 Saralita Senior Village Kerrville
16169 Havens of Hutto Hutto
16263 Starlight Murillo
16292 Avanti Canyon Schertz
16373 Avondale Farms Seniors Fort Worth
16380 Sierra Vista Lopezville CDP
16387 Cantabria Estates Apartments Brownsville
h) Presentation, Discussion, and Possible Action to Issue a list of Approved Applications for Housing Tax Credits ("HTC") in accordance with §2306.6724(e) of the Texas Government Code

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

OPEN SESSION

ADJOURN
PROCEEDINGS

MR. OXER: Good morning, everybody. I'd like to welcome you to the June 30 meeting of the Texas Department of Housing and Community Affairs Governing Board.

We will begin with roll call. Mr. Chisum is not here today.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Goodwin?

MR. GOODWIN: Here.

MR. OXER: Dr. Muñoz will be with us in a minute.

I'm here, we have four to start, that gives us a quorum, so we're in business.

Tim, lead us in the salutes to the flags.

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

MR. OXER: Michael, do we have any guests to recognize today? Is Bobby here today, Bobby Wilkinson?

MR. GOODWIN: No.

MR. OXER: Not here. It's summertime.

MR. LYTTLE: They're watching from home.
MR. OXER: All right. Hello to everybody watching on our internet cable connection this morning. Let's get down to work here. With respect to the consent agenda, does any Board member wish to pull any item from the consent agenda?

MS. BINGHAM ESCAREÑO: No.

MR. OXER: Can I have a motion to consider?

MR. GOODWIN: So moved.

MR. OXER: Motion by Mr. Goodwin.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann to approve the consent agenda as shown. There's no request for public comment.

Let the record reflect that Dr. Muñoz has now joined us.

MS. BINGHAM ESCAREÑO: Discreetly.

MR. OXER: Discreetly would have been coming in the back door. We figured you were just finishing signing up autographs over at the hotel.

DR. MUÑOZ: It took me time to get the bow tie right.

MS. BINGHAM ESCAREÑO: Oh, I guessed it. You owe me lunch.

MR. OXER: As everybody will recognize, we're in summer casual. Casual for Dr. Muñoz means a bow tie
instead of the full three-piece.

(General laughter.)

MR. OXER: At any rate, glad you could make it.

All right. Motion by Mr. Goodwin, second by Mr. Gann to approve the consent agenda as presented.

Those in favor?

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: There are none.

Okay. Let's jump right in on it. Let's see, number 3(a). Ernie, it looks like you're up first. Good morning.

MR. PALACIOS: Good morning.

MR. OXER: So far.

MR. PALACIOS: Mr. Chairman, members of the Board, Mr. Irvine. For the record, I'm Ernie Palacios, director of Financial Administration for the Department.

Over the last four months we've been meeting with division directors and managers to develop the internal operating budget for fiscal year 2017. Behind item 3(a) is internal operating budget which includes the comparison report for the 2016 operating budget. I would like to provide you information related to the amount of the budget, the expenditure categories of where the money
will be used, and lastly, the financing associated with recommending this budget for the upcoming fiscal year.

The proposed budget is $26.3 million. This represents a $543,000, or 2 percent decrease from the current budget. The decrease is primarily attributed to a 2016 proposed community affairs weatherization training academy contract that was not cost-effective to implement, and the continued ramp down of our NSP program. In addition, the capital budget for the second year of the biennium is $114,000 less than the first year, as requested in our LAR.

Also included in the budget is a one percent line item that we put in for potential salary increases for employees, such as merits, reclasses and other items the Department may want to consider throughout the fiscal year.

The Department's cap FTEs is 313, the budget has 306 FTEs; 242 are TDHCA personnel and 64 are Manufactured Housing staff. That's seven less than appropriated.

The method of finance was affected as follows: general revenue and federal funds decreased 7-1/2 percent and 9.6 percent, respectively; appropriated receipts had an increase of $245,000, or 1.5 percent increase; and finally, our interagency contracts increased 41 percent.
due to a new contract with the Texas Department of State Health Services, this is an interagency contract for a home and community-based services adult mental health program that helps support individuals with mental illnesses.

Also, I would like to note for the record, in accordance with the Internal Auditing Standards and the Board's Internal Audit Charter, the budget includes the Internal Audit Division's annual operating budget.

This concludes my remarks on this item, and I'm available for any questions you may have.

MR. OXER: Any questions from the Board? Ernie, you point out that this includes the cost of the internal auditing group. Did the former budgets not include those?

MR. PALACIOS: It's just a statement. They need to have their budget approved at a formal Board meeting.

MR. OXER: Okay. So we're basically formally approving two budgets at once, more or less.

MR. PALACIOS: Theirs is included within ours.

MR. IRVINE: I think the point there is that Internal Audit and the Audit Committee have some high level autonomy in developing their budget.

MR. OXER: Okay. Any questions?
MR. OXER: Motion to consider?

MR. GANN: I'll make a motion to approve the 2017 operating budget.

MR. OXER: Motion by Mr. Gann to approve staff recommendation on item 3(a) with respect to the 2017 operating budget.

MS. BINGHAM ESCAREÑO: I'll second.

MR. OXER: Second by Ms. Bingham. No request for public comment. Motion by Mr. Gann, second by Ms. Bingham to approve staff recommendation on item 3(a).

Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

MR. IRVINE: May I offer a comment? It's been an incredibly productive budget process. I'd really like to thank Ernie for leading the effort, and David Cervantes, Joe Guevara, and our new planner in chief, Krissy Vavra. You guys have been just wonderful to work with. I've heard kudos from top to bottom and side to side in the agency.

MR. PALACIOS: Thank you.

MR. OXER: Good. Glad you got it right, Ernie.
MR. PALACIOS: Thank you.

One more item. Now I would like to turn your attention to item 3(b), the Housing Finance Division budget. This particular item is a subset of the larger budget that is in relation to the Housing Finance budget that we are required to submit under Texas Government Code and in compliance with the General Appropriations Act. This subset of the budget is specific to the fees that we generate, typically referred to as the Housing Finance budget of the Department, and at this time we're also prepared to certify this budget.

I'm available for questions.

MR. OXER: Any questions?

MS. BINGHAM ESCAREÑO: Anything unusual?

MR. PALACIOS: No. Pretty standard.

MR. OXER: Pretty 500 yards straight down the fairway. Huh?

MR. PALACIOS: Exactly.

DR. MUÑOZ: Five hundred?

MR. OXER: That would be unusual for you anyway.

(General laughter.)

MR. OXER: Motion to consider?

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to approve
staff recommendation on item 3(b).

    DR. MUÑOZ: Second.

    MR. OXER: And second by Dr. Muñoz. There's no request for public comment. Those in favor?

    (A chorus of ayes.)

    MR. OXER: And opposed?

    (No response.)

    MR. OXER: There are none.

    MR. PALACIOS: Thank you for your time.

    MR. OXER: Thanks, Ernie.

    Teresa.

    MS. MORALES: Good morning.

    MR. OXER: It's a wonderful morning.

    MS. MORALES: It's a wonderful morning.

    Item 4(a) has been pulled from the agenda with respect to the inducement for Piney Woods Village. That particular item will be brought before you at a subsequent Board meeting.

    MR. OXER: Okay.

    MS. MORALES: So we're on to 4(b). Item 4(b) involves an award of 4 percent Housing Tax Credits and a direct loan from the 2016-1 NOFA. New Hope Housing at Reed involves the new construction of 187 units in Houston and will be a supportive housing development serving families that are homeless or at risk of homelessness.
What makes this development unique is that it is part of a 48-acre tract that includes the Star of Hope's Family Place complex. The Star of Hope facility will consist of a campus model, including housing and access to services in one location within walking distance. It is anticipated that many clients will initially enter and live in sectors of the Star of Hope's Family Place, and then as they receive services, participate in programs offered and stabilize. Once stabilized, they would move into New Hope Housing at Reed, while still having access to those programs and services from Star of Hope.

There are undesirable neighborhood characteristics associated with this application, which include crime, school ratings and environmental findings.

With respect to crime, the rule states that if a development is in a census tract or within 1,000 feet of a census tract where the rate of violent crime exceeds the threshold of 18 per 1,000 persons annually, then disclosure is required. This development is located within 1,000 feet of two other census tracts that exceed the crime rate threshold. The application included local police beat data for these adjacent tracts which indicated that over the past 21 months the average violent crime rate per 1,000 persons was 9.78. Staff considered this
information to be acceptable mitigation under the rule.

As it relates to environmental concerns, this involves the presence of facilities within a one-mile radius that involve the treatment, storage and disposal of hazardous materials. However, in the professional opinion of the environmental site assessment provider, the facility does not appear to present an environmental concern to the proposed development and no further testing was recommended.

Now on to the school issue. I have frequently been before you talking about schools for various development sites that don't have the Met Standard rating, and in all of those instances it's been the case where the performance of the school in question has been up and down over several years. New Hope Housing at Reed is proposed in an attendance zone where the elementary school, Young Elementary, follows this same pattern in that it did not meet standard in 2013, met standard in 2014 and even exceeded the target score on all four performance index indicators and earned four distinctions, and then went back to Improvement Required in 2015.

Schools that are identified as Improvement Required get assigned a transformation team by the district that have oversight responsibilities and regular contact with the administrators at the school. A letter
from the chief school officer assigned to Young indicated that based on her familiarity with the school improvement plan currently in place and performance throughout this school year, she fully expects Young Elementary to return to Met Standard by the time New Hope Housing at Reed places in service in 2018.

The high school, Worthing High School, is a little different. Worthing has failed to achieve Met Standard for 2013, 2014 and 2015. As you might imagine, this took quite a bit of staff time to work through, and I would like to extend staff's appreciation to the applicant for being patient and working with staff as we worked through the issues and concerns that this presented.

A letter from Houston ISD First Vice President of the Board of Education Wanda Adams was submitted that explained the transformation process underway by Houston ISD in an effort to mitigate the school's prior performance. Ms. Adams notes that along with the experienced and well developed team of educators and administrators now on board to ensure Worthing's success, she has confidence and every expectation that Worthing will make consistent and sustained improvements that will result in a Met Standard rating by the time New Hope Housing at Reed is placed into service. It is documented that Houston ISD is putting all of its appreciable
resources into Worthing High School in hopes of returning the school to a Met Standard status.

The letter from Ms. Adams indicates that the efforts Houston ISD is taking, as indicated under the rule, there is a reasonable expectation that Worthing High School will achieve Met Standard by the time the proposed development places into service, and the letter submitted for Young Elementary states the same.

A letter from the City of Houston Housing and Community Development Department was also submitted that affirmed the City of Houston's support for New Hope Housing at Reed, and also indicated that the proposed development directly addresses several of the city's initiatives, including reducing homelessness and affirmatively furthering fair housing. The City of Houston states that low educational attainment among minorities is identified in their analysis of impediments, and that New Hope Housing at Reed addresses this impediment such that the tenants will have access to the services offered at the Start of Hope's campus. These will include educational advancement, after school programs for youth, daycare, and early childhood education.

Staff believes that based on the confluence of all of these mitigation efforts, the proposed development
should not be considered ineligible under the rule, and further recommends approval of 4 percent Housing Tax Credits in the amount of $1,037,535, and an award of direct loan funds in the amount of $660,000, with the conditions as noted in your writeup.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Was there any opposition to this?

MS. MORALES: No, there was not.

MR. OXER: Joy, I assume you're here just to answer questions?

MS. HORAK BROWN: (Speaking from audience.) I am.

DR. MUÑOZ: Move staff's recommendation.

MR. GOODWIN: Second.

MR. OXER: Motion by Dr. Muñoz, second by Mr. Goodwin to approve staff recommendation on item 4(b).

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

MR. OXER: Okay.

MS. BINGHAM ESCAREÑO: The 120 days and part of our resolution will be to allow EARAC to make the decision whether to extend or not. Do you feel like the 120 days is reasonable?

MS. MORALES: I do.
MS. BINGHAM ESCAREÑO: Joy, the 120 days?

Good.

I don't have any other questions.

DR. MUÑOZ: I made the motion, but just a question. You know, some of those after school programs, enrichment programs, like once in service, do we go back and ensure, like we do sort of other physical attributes of the development?

MS. MORALES: One of the threshold requirements is the provision for tenant supportive services. There's a list of those tenant supportive services that the applicant can select and implement at the property. When compliance goes out they do ensure that those supportive services are being provided.

DR. MUÑOZ: The way we do air conditioning and fans.

MS. MORALES: Correct.

DR. MUÑOZ: I was just curious.

You know, those kinds of programs can be disrupted and maybe you hire somebody to come in and facilitate those and they relocate, and so it's different from sort of a fixed sort of amenity. Right? Sometimes you've got to continue to sort of monitor.

MS. MORALES: And then also, it depends on the tenant profile. So often after a development places into
service, the figure out what types of services the tenants would like, and then they implement those. So it does come and go.

DR. MUÑOZ: And then we're updated on those services and you check those?

MS. MORALES: When we go out we make sure that they're providing the tenant services that they're required to under the tax credit LURA.

MR. IRVINE: Services they select are memorialized in their LURA and we go out and monitor to the LURA.

MR. OXER: So we send Chief Murphy out.

MS. MORALES: Chief Murphy.

(General laughter.)

MR. OXER: All right. Any other questions?

(No response.)

MR. OXER: With respect to item 4(b), motion by Dr. Muñoz, second by Mr. Goodwin to approve staff recommendation. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

Do you have a question, Counselor?

MR. ECCLES: I was just going to ask if public
MR. OXER: I asked. Joy was the only one and she was here to answer questions.

Okay. You've got 4(c).

MS. MORALES: Item 4(c) involves an award of 4 percent Housing Tax Credits and a direct loan from the 2016-1 NOFA. Acme Road Apartments involves the new construction of 324 units in San Antonio and will serve the general population. The applicant properly disclosed that one of the schools in the attendance zone did not achieve Met Standard ratings based in the 2015 TEA ratings. While the elementary school for the attendance zone met the standard the prior year, they fell one point shy of meeting the target score on one of the performance index indicators in 2015, and therefore, did not achieve the required rating.

The Department received a letter from Edgewood ISD that provided additional information on the school's performance, including upward trends in student progress and closing performance gaps, as well as increased parental involvement this year. Staff believes the letter adequately addresses the concerns such that staff recommends the site be considered eligible. It is also important to note that in the letter, Edgewood ISD expresses their support for this development.
The previous participation review revealed a Category 3 designation for this applicant's portfolio. While this category under the rule is not required to propose conditions on the award that would address the concerns with their compliance history, EARAC expressed concern over communication problems between the applicant and its partners that have persisted since a similar condition was placed on one of their prior awards a few months ago. This condition required action by June 27, 2016 and staff can confirm that the documentation was submitted as required.

Staff recommends approval of a 4 percent Housing Tax Credit award in the amount of $1,553,716 and direct loan funds of $2 million, subject to the conditions listed in the Board writeup.

MR. OXER: So we're exercising the 4 percent pretty well then.

MS. MORALES: Yes.

MR. OXER: That's good, that's a good thing.

MS. MORALES: Yes.

MR. IRVINE: Teresa's busy.

MR. OXER: Teresa's been busy.

Any questions from the Board? Motion to consider?

MS. BINGHAM ESCAREÑO: So moved.
MR. OXER: Motion by Ms. Bingham.

MR. GANN: Second.

MR. OXER: And a second by Mr. Gann to approve staff recommendation on item 4(c). There's no request for public comment. Motion by Ms. Bingham, second by Mr. Gann with respect to item 4(c) to approve staff recommendation on item 4(c). Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

And with respect to 4(d), I understand that one has been pulled, Teresa.

MS. MORALES: That's correct.

MR. OXER: Is that all four of those items?

MS. MORALES: Yes. They're all related.


Okay, Sharon.

MS. GAMBLE: Good morning, Board, Mr. Chairman. My name is Sharon Gamble and I am the administrator for the competitive 9 Percent Housing Tax Credit Program.

Item 4(e) is a presentation, discussion and possible action on timely filed scoring appeals under the Department's Multifamily rules. 10 TAC, Section 11.9 related to competitive HTC selection criteria identifies
the scoring criteria used in evaluating and ranking applications. For each application that remains competitive, our staff completes a first and second review of the scoring criteria and then I complete an administrative review. After the administrative review, a scoring notice is sent to the applicant. This notice indicates points that the application may have lost during the review process, and the scoring notice offers the applicant an opportunity to appeal the loss of points, and that's what brings us here today.

In order for an application to receive one point under Subsection 11.9(c)(6)(E) of the Qualified Allocation Plan regarding underserved areas, the development site must be located in a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for developments serving the same target population that remains an active tax credit development, or if it is serving the same target population, that has not received the allocation within the last ten years.

Now, in testing for this, staff reviewed the Housing Tax Credit property inventory which is updated as of January 6, 2016, that Board meeting. The inventory includes the census tracts that each of the developments is located in and so staff can sort the inventory by
census tract and then we look at all of the developments in that census tract to see if any of them violate this rule. Staff found that the census tract in which application 16001 is proposed includes the existing Friendship Place which was first awarded in 2004 and received a supplemental allocation of credits from the 2007 credit ceiling.

The appeal asserts that the 2007 supplemental allocation of tax credits should not be considered for the analysis of whether the census tract includes a development that has received a competitive allocation in the last ten years. The supplemental allocation was awarded to 2004, ’05 and ’06 applications that were not placed in service yet or that did not complete cost certification before January 1 of 2006, and that evidenced increased direct construction costs that were attributed to Hurricane Katrina and Hurricane Rita that blew through. The supplemental allocations were funded with four commitments from the 2007 and 2008 competitive Housing Tax Credit ceiling.

Staff's determination in this matter is based on the definition of competitive, as the rules require that the development site be located in a census tract that has not received a competitive Tax Credit allocation within ten years. 10 TAC 11.9(c)(6) refers to competitive
tax credit allocations and to 4 percent non-competitive
tax credit allocations to incorporate all of the prior
allocations that have been funded by the Department, and
there are no other forms of tax credits described in the
rules. The rule definition of competitive focuses on the
source of the credits, it doesn't focus on the process of
the application and the process of the award.

Subsection 10.3(a)(23) defines competitive
Housing Tax Credits as tax credits available from the
state housing credit ceiling, and as I said before, these
awards were made from the housing credit ceiling from 2007
and 2008, so because the credits came from the credit
ceiling, they do meet the rule definition of competitive,
and because of that, we ask you to find that Friendship
Place should be counted and that you deny this appeal.

If you have any questions, I can answer them.

MR. OXER: Any questions from the Board?

Ms. Bingham, go ahead. Me too, I'm behind you.

Go ahead.

MS. BINGHAM ESCAREÑO: This is a good lay
question. I was with you all the way up until like the
second definition of competitive, about the credits coming
from the state housing credit ceiling, and for that
reason, right, you're looking at the 2007 supplemental as
being the reason that we would deny the appeal.
MS. GAMBLE: That's correct.

MS. BINGHAM ESCAREÑO: So do you guys think that's the spirit of the intent, that that's the intent of that?

MS. GAMBLE: I do, and I guess another way to say it is that all of the tax credits that we award pretty much come from the ceiling. When we get credits returned, they are returned to the ceiling and then they enter the competitive process that way. And so I don't know another way that we award credits that are not from the ceiling.

MR. IRVINE: I think the spirit of it is we have a finite amount of credit that we can award and we want to provide incentives in areas that have not received those benefits in the preceding period.

MS. BINGHAM ESCAREÑO: Gotcha. And so the initial award back in '04 was outside of the timeline, right, but the '07 is the consideration, and it sounded like to me that supplemental funding, or whatever you want to call it, award went to any of the '04s and '05s that weren't in service yet -- any of the '04s and '05s that hadn't already been placed in service. Is that part of it?

MS. GAMBLE: That's correct.

MR. OXER: So were we in the process of having to get rid of tax credits back then?
MS. GAMBLE: No, it wasn't getting rid of tax credits. There were construction cost increases as a result of hurricanes, everything became more expensive, and so that's what happened.

MS. BINGHAM ESCAREÑO: Okay. I mean, I'm sure we'll hear more about the appeal.

MR. IRVINE: People who lived through it will recall that those were extraordinary times. In addition to dealing with disasters and rising costs, we also eventually encountered the financial collapse. There was a lot of stuff going on that really made it hard to get deals done, and there was a pretty bold initiative taken by the Board to make sure that these deals that otherwise would be unable to move forward got some additional assistance, and that assistance came out of a later ceiling.

MR. OXER: Okay. So what this really gets down to is there's two pots, the competitive and the non-competitive.

MS. GAMBLE: Correct.

MR. OXER: And these came out of the competitive pot.

MS. GAMBLE: Correct.

MR. OXER: Any other questions?

MS. BINGHAM ESCAREÑO: And that it was the
intent of the supplemental awards was to get projects done that had initially been awarded but were going to struggle because of these hardships that came up because of constructions costs around the hurricanes.

MR. OXER: So it's bad timing.

MS. GAMBLE: Yes.

MR. IRVINE: But in terms of timing, it's important, I think, also to remember that regardless of when the award determinations were made, the credits themselves could not actually go to the development until they came into existence under the '07 cap.

MR. OXER: So these are not 2004 that were left over, these were 2007. They essentially said, We can tell that you're in trouble so here's some more.

MS. GAMBLE: Exactly.

MR. GANN: And that's the placed in service date, really, is it not?

MR. OXER: No.

MR. GANN: When the credits go out it's the placed in service date, is it not?

MR. IRVINE: It triggers the starting of the placed in service date.

MR. OXER: When the credits go out, but the credits came out from the 2007 allocation.

MR. IRVINE: And before that allocation was in
place, they didn't exist.

   MR. OXER: Okay. So these were new credits
form 2007 that were offered to three-year-old projects
that were sort of limping along that were going to be
having a problem, they needed these to get through those
times, and so they got them. So now the question is does
that 2007 trigger that ten-year window.

   MS. GAMBLE: Correct.

   MR. OXER: Everybody got it? Any other
questions?

   (No response.)

   MR. OXER: Motion to consider?

   MR. GOODWIN: So moved.

   MR. GANN: Second.

   MR. OXER: Motion by Mr. Goodwin, second by Mr.
Gann to approve staff recommendation. There is request
for public comment.

   MS. BAST: Good morning. Cynthia Bast of Locke
Lord, representing the applicant here.

   And I think that you've got all of the basics
of the issue. It's been a little bit of a blast from the
past for me as I go back and actually look at transcripts
where I was testifying thirteen years ago.

   MR. OXER: Is that as frightful to you as it
would seem to be to me?
MS. BAST: It is.

I think what we have here is a difference of interpretation focusing on this phrase "competitive tax credit allocation." You've heard from the staff that they believe that the use of this phrase "competitive tax credit allocation" refers to a credit ceiling, but as I noted in my appeal letter, this phrase "competitive tax credit allocation" is really only used once in the QAP, whereas, the phrase "application round" which refers to a ceiling is used throughout the QAP. And I believe, therefore, that the word "competitive" does have meaning here and it goes to exactly what you were mentioning, Ms. Bingham, which is the spirit of this rule.

This is a rule about an underserved area, and the question is when is the last time that this census tract got a deal. That's what we want to know. They got a deal in 2004, and that's when the award of tax credits was made. A supplemental additional award was made in 2007 to assist with cost overruns due to this unforeseen circumstance. But they didn't get another deal in 2007, they didn't get any more units on the ground, that was just to supplement the deal that they got in 2004.

And that's why I believe that the word "competitive" is meaningful in this context. The credits awarded in 2007 were not competitive, they were awarded to...
everyone based upon a formula, if you look back at the policy of how that was done. And so by referring to competitive credits in this particular rule, I believe that we can exclude non-competitive credits that were awarded as a supplement from consideration, and that that would be consistent with the concept of this particular rule for an underserved area.

So on that basis, we are asking you to grant this appeal, and I'm happy to answer any additional questions.

MR. OXER: Any questions from the Board? This sounds like a definitional issue.

Okay. Thanks, Cynthia.

MS. BINGHAM ESCAREÑO: Mr. Chair, I was looking for Cynthia's appeal letter in our Board packet. Did you happen to see it in our Board packet?

MS. BAST: Yes, ma'am, it is in the Board packet. I do have a hard copy here if you would like the hard copy in front of you. I don't know the PDF page.

MR. GOODWIN: Page 62 of the three-ring supplemental.

MS. BAST: Thank you, Mr. Goodwin.

MR. OXER: It's only 800 pages in the supplement this time.

MS. BINGHAM ESCAREÑO: Maybe it's letter
received

MR. OXER: Look at it this way, at least we're not killing trees.

MS. BINGHAM ESCAREÑO: And J.B. has it under 4(e)?

MR. GOODWIN: Yes.

MR. OXER: Sharon, I have another quick question, since it comes around, if it were to go to next year, this one wouldn't have this problem in next year's round because it's been ten years, it will have been ten years next year.

MS. GAMBLE: I think that's correct. I'm not sure if it matters what date it was. It was in like October.

MR. OXER: That's the question. It's not the date, it's the year of the allocation.

MS. GAMBLE: Right, it's the year.

MR. OXER: Okay. Thanks.

MS. BINGHAM ESCAREÑO: Thank you. I found it.

MR. OXER: Anything else, Ms. Bingham? Are you good with that?

DR. MUÑOZ: If the supplemental funding hadn't been provided, is there any doubt that the project would not have continued? Do you know what I'm saying, Tom?

MR. GOURIS: Tom Gouris, deputy executive
director.

Are you referring to the original, the 2004?
That was, in fact, the premise for the additional credits. One of the premises was those deals were in such dramatic financial disarray that they needed this additional credit allocation to be successful. Now, whether or not that was absolutely the case or just one of the arguments for doing so certainly was part of the discussion.

MR. OXER: How many other deals from 2004-2005 received supplemental credits that year?

MR. GOURIS: The vast majority of them did.

DR. MUÑOZ: And what percentage are in service?

MR. GOURIS: All of them are.

DR. MUÑOZ: All of them. So it would seem that at least in 100 percent of the cases the supplemental funding resulted in --

MR. OXER: It worked.

DR. MUÑOZ: It worked.

MR. GOURIS: Yes, that's right.

MS. BINGHAM ESCAREÑO: Did they have to apply for it?

MR. GOURIS: There was a small application or ask, a certification and ask that they hadn't already placed in service. They didn't have to apply under the 2007 rules. In fact, the criteria was that they would be
qualified under the 2007 rules based on the fact that they had received an award in 2004, so they didn't have to apply the full application. They did have to go through the cost cert process, though, and that's part of the application process, if you will.

MR. OXER: The cost certification was part of demonstrating if they were in financial distress.

MR. GOURIS: That actually occurred just before the cost certification supported that contention.

MS. BINGHAM ESCAREÑO: Can I ask a corollary to Dr. Munoz's question? So if that project, if Friendship hadn't gotten the funds and hadn't been able to get it off the ground, right, without the supplemental funds, then it wouldn't have counted. Right? In other words, then if Rolling Hills' application came through, it would get awarded because the Friendship project never got off the ground because it didn't get the supplemental funds. Right?

MR. GOURIS: If they hadn't gotten the supplemental funds, it wouldn't have been counted, and Rolling Hills would have been able to get the points. That's correct.

MS. BINGHAM ESCAREÑO: I guess I'm just struggling with to me it sounds like as a board we made a
decision to provide some supplemental funds to get '04 and '05 projects done, whether it was in '06, '07, '08 or whatever, that the intent was it was to get those '04 and '05 projects off the ground and that it would count as an '04 and '05 awarded project and not get in the way of a 2016 application. And I understand the whole funding and using competitive credits, but it just seems to me that the intent of the Board back at that time was to get those '04 and '05 projects done that otherwise wouldn't have gotten done without the supplemental funds.

MR. IRVINE: The way I would characterize it, keying off of Cynthia's description, was yeah, they went through the competitive process and they got their deal several years earlier, there's no doubt about that. And that deal came and got an award of credits from a limited finite competitive pool but that wasn't enough to get it done, so what they really got several years later was the fulfillment of their earlier deal but it came from the '07 limited finite pool.

MS. BINGHAM ESCAREÑO: So you just see it the other way, that it actually became an '07 project because it couldn't come to fruition in '04 or '05.

MR. GOURIS: A hypothetical situation that might help you think through it is if there was a bond transaction for a rehab in this region or in this area
that had received an award in 2007 or since 2007 but it
was preexisting tax credit transaction that came back, it
would have, in fact, excluded them from the points as well
because all the competitive 9 percent and all the non-
competitive 4 percent that received an award in the last
ten years. If that makes sense.

MS. BINGHAM ESCAREÑO: Thank you.

MR. OXER: We're get to blame this one on a
hurricane.

MR. GOODWIN: Were there any other situations
like this in the State of Texas on that '07 supplemental
award?

MR. GOURIS: Sure. Every development that
received a supplemental award would have caused there to
be a ten-year period to have to follow based on our
current rule.

MR. GOODWIN: Well, we're pretty close to the
end of that ten years, and my question to you is is there
any other applications that are filed that are also?

MR. GOURIS: No, not that we know of. But
there may be someone looking at a site, they look at that
site and say I won't get those points for that reason. I
guess there was one other but it was not competitive this
year. So it's possible that there are others as well.

MR. GOODWIN: Somebody might have looked at a
census tract and said, Well, we've got the seven. Why did
they follow through with this one, maybe, Cynthia, is a
question if it was well known that these were going to be
ruled competitive as of 2007?

MS. BAST: Mr. Goodwin, I think they followed
through because they read the word "competitive" to mean
competitive and that the 2007 award was not a competitive
award. When the Board chose to award these additional
credits out of the 2007 ceiling, there was a lot of
discussion about how it would impact the existing rules.
There were things like caps on credits per deal, caps on
credits per developer.

MR. OXER: They just didn't take into account
how it was going to affect future rules.

MS. BAST: Right. So they really were very
careful to say this is how we want this to work with our
existing rules. Unfortunately, this rule was not in play
at the time, and so, again, our applicant looked at this
as 2007 credits, even if they're aware of them, the fact
is they weren't competitive because it was an additional
allocation.

DR. MUÑOZ: But Cynthia, I mean, just logically
speaking, it's a stretch for me to conclude that this
supplemental funding which was unequivocally attached to a
competitive application would have been interpreted as
outside of a sort of definitional understanding of competitiveness. It just wasn't arbitrary. I didn't read the transcript, like you may have from 2007, but I'm positive that the argument would have been: In order to make this competitive project move forward. I appreciate the argument right now, but it just seems to me that the only reason we're talking about this right now is because the additional dollars were introduced in order to improve the viability of the initial award which was a competitive allocation.

MS. BAST: And to me, that goes back to the issue of when did that census tract get a deal, and arguably they got the deal in 2004. Yes, they ran into financial trouble, it may not have been done if the 2007 credits hadn't been awarded, but they got the deal in 2004. And that's the spirit of the underserved area.

Tom's example on a rehab, I certainly do understand that example, but I would say that an old tax credit deal that is then being rehabbed, that becomes a new deal because you're renovating something.

So that's the crux. You all understand the arguments and you get paid all these big bucks to make these hard decisions.

(General laughter.)

MS. BAST: So I trust you to make a good
decision. Thank you.

DR. MUÑOZ: I think we pay for our own lunch, but I'll check on the big bucks, I might have missed that.

MR. OXER: Apparently some have taken offense at the idea that we are paid in tuna fish sandwiches.

With respect to item 4(e), any other comment, Counsel?

MR. ECCLES: I have advice that I could give in executive session on this matter if it is needed by the Board.

MR. OXER: Does anybody feel like they have a comment? All right. At least one, which would be Ms. Bingham, she'd like to hear that. So I'm going to recommend we table this item until we return from lunch, because I expect we're going to be going fully through lunch and into the early part of the afternoon today. We'll receive counsel from our general counsel in executive session and come back to this.

Mr. Goodwin and Mr. Gann, I assume that you'll approve that we will table.

MR. GOODWIN: Move to table.

MR. GANN: Second.

MR. OXER: Motion to table by Mr. Goodwin, and second by Mr. Gann. Is everybody in favor to table?

(Board members responded yes.)
MR. OXER: All right. We'll table that one until we come back, so everybody just hold your fire on that one.

Okay, Marni.

MS. HOLLOWAY: Good morning, Chairman Oxer, members of the Board.

I believe you are aware that item 4(f) is being pulled from the agenda. We'll be bringing that to our July 14 meeting.

MR. OXER: Right.

MS. HOLLOWAY: On to 4(g), we have a lot to work through on this item and my suggestion is as we're working through public comment, we just go each application one at a time. Otherwise, there's going to be a lot of information to try to sort through.

MR. OXER: Hold on just a second. So there are a summary of each of these items, we'll go through them one application at a time, the applications are numbered. If we accept the documentation and presentation that you make, we'll just keep moving on that.

And for housekeeping purposes, as we move through these one application at a time, if there are requests for public comment on that application, wait until that application number is called, come up here on the front row, and we'll take comments on that if there
are some. And if we determine that there are comments, since we have so many of these, I'd like to go through, get the ones that are less than controversial out of the way first, and then if we have a few that are going to generate some interest, then we'll take those at the end.

MS. HOLLOWAY: So would you like me to reorder?
MR. OXER: Well, let's go through them one at a time and I'll request for a show of hands of those who want to make public comment. If there's not any, then we'll deal with it, dispatch that one and move on. But if there are requests for public comment, we'll move it to the end and take those in a batch.

MS. HOLLOWAY: Okay, certainly.

MR. OXER: Is that clear to everybody? Okay. Have at it.

MS. HOLLOWAY: Item 4(g), staff is presenting a summary of the determinations made under 10 TAC, Section 11.10 of the 2016 Qualified Allocation Plan. These are third party requests for administrative deficiencies. This replaces the challenge process that's been used in years past, provides a mechanism for unrelated persons or entities to bring new material information about an application to staff's attention and request that we consider whether an application should be subject to an administrative deficiency. Requesters must provide
sufficient credible evidence that if confirmed would substantiate the deficiency request.

So we receive the requests and we proceed as we deem appropriate under the applicable rules, including whether or not the application is determined to be a priority application or not. So if it's not a priority application, we're not going to address the third party request.

All requests were received and reviewed in accordance with Section 11.10, and where staff determined that the request substantiated the issuance of notice of an administrative deficiency, the applicant was provided the opportunity to respond to the submitted request.

Staff has reviewed both the request and the response in making its determinations.

The Department has posted each request, along with any deficiency notice that was released, supporting documentation, and the staff's determination to each application on our website. You'll remember that this year we have all the applications up on our website in real time, so everything that we're working on is appearing on our website in real time.

Where staff has determined that a request should result in the loss of points or other action, the applicants have been notified and they've been given an
opportunity to appeal the staff determination. While not required, the staff has also provided notice of the result of the request to the requesters.

So there isn't a provision in this rule, as there was with the challenge rule, that we come to you and provide a report to the Board, so we're doing this just so that you're aware of our process and what's going on. Of course, you have final decision-making authority on any of these issues. As we're working through, if there is a particular item that you would like us to more fully develop and bring back to the July 14 meeting, we of course will do that for you.

So the first one is application 16012, Mariposa at Clear Creek. We have some comment. The request that we received questioned whether the proper notification had been provided to all of the required individuals in the application process. Staff issued a notice of administrative deficiency to the applicant. The applicant submitted certified mail receipts evidencing that the appropriate parties were notified. Staff has reviewed the response provided and determined that the matter was resolved.

MR. OXER: We're going to modify. Apparently I wasn't clear on how we want to try to do this. On 16012, you'd like to comment. Right, Cynthia? So we know that
Let's go down through these before we get to the points of each one of them. On 16026, does anybody want to comment on that one?

(No response.)

MR. OXER: Okay, so we'll take the report on that one.

With the lack of interest in public comment, is there any need to go through much detail apart from what you've presented in the Board book, Marni?

MS. HOLLOWAY: Unless there are questions from the Board.

MR. OXER: Okay. How about Baxter Lofts?

16057, Silverleaf at Mason? There's one on that one.

16071, Bluff View Senior Village? That one looks good.

MR. OXER: 16117, Indian Lake Apartments. Where are we at back there? Okay, got it.

The Standard on the Creek in Houston? Okay, questions on that one.

Elysium Park, 16161? It looks like that one is good.

Saralita Senior Village, Kerrville, 16164? That one is okay.

16263, Starlight? That one is good.

Avant Canyon, 16292? That one looks good.

16373, Avondale Farms Seniors? All good there.

Sierra Vista, 16380? Attracting a little attention on that one.

16387, Cantabria Estates Apartments? That one looks good.

(Inaudible speaker from audience.)

MS. HOLLOWAY: If I may address on this particular issue.

MR. OXER: Marni, restate what Toni said so we can make sure it's on the record.

MS. HOLLOWAY: There's a request that 16387, Cantabria Estates Apartments in Brownsville be pulled from this report item. The request for administrative deficiency and working through the process on this application did result in a scoring notice. The appeal of that scoring notice was received yesterday, so we're working through that appeal right now, and if we wind up there, you will hear that appeal as the Board. This report item is only about the requests for administrative deficiency, it's not asking you to take any action on the scoring notice or the appeal.

MR. OXER: Okay. So the action with respect to
putting a deal in or out of the round comes in two weeks, essentially.

MS. HOLLOWAY: Essentially, yes.

MR. OXER: Okay. So what we're really looking to do is see if there is enough information that's been generated so far for us to come to some determination on the ones that people have an interest in.

MS. HOLLOWAY: Yes.

MR. ECCLES: Actually, if I may interject, these are all reports.

MS. HOLLOWAY: These are all reports at this point.

DR. MUÑOZ: They don't require any action.

MS. HOLLOWAY: They do not require any action at this point. If you would like us to bring an item back so that the Board may fully address that issue, we absolutely will do that and bring it back as a separate item for the July 14 meeting. This request for administrative deficiency is new this year. We're working through it and we want to make sure that you as a Board are fully informed, and of course, have the opportunity to say yea or nay as we're working through.

MR. OXER: So the point of hearing comment on this, you would say there was a request for administrative deficiency, basically the challenge, you'll present some
information, and we'll say we either accept the report, bring us the appeal the next time, or go back and work on this and bring us some more information.

MS. HOLLOWAY: Uh-huh.

MR. OXER: Okay. So of those it appears there are at least nine, maybe ten that the process is underway. We'll start with the first one here. So Cynthia, knowing that this is a point of a review, the request for the comment on this for now would be what?

MR. IRVINE: Might I just interject? The purpose of receiving this testimony, in my belief, is for you to decide if there are just enough issues in controversy that you would like to have this re-presented in detail at the July 14 Board meeting.

MR. OXER: Is that how you see it?

MS. BAST: Mr. Oxer, that is how I see it for these in general. I have just one very specific question for item 16012. Cynthia Bast of Locke Lord, representing the requester.

After seeing the applicant's response to the administrative deficiency, the requester has submitted an open records request to the county and does not have that response yet, and so we just want to make sure that if additional material information is received that is meaningful to this analysis, that it can still be
presented and considered and that there's nothing that would foreclose that. That's all we want to ensure.

MR. OXER: I don't think that would be the case. I'll stand corrected if there is any correction to be made by the E-D or general counsel.

Marni, if they brought some more information, we always have, as the Board, the option to approve or deny an appeal.

MS. HOLLOWAY: Yes, absolutely. A couple of things. There is not a formal deadline for the third party request for deficiency. There is an advisory deadline, I guess we would call it.

MR. OXER: More like a warning?

MS. HOLLOWAY: Yes, in early June that we may or may not review requests received after that date, just as a matter of trying to work through the process. Of course, if we received material information regarding an application, that is something that we would discuss very carefully amongst us and bring to the Board.

DR. MUÑOZ: And maybe bring to the Board, maybe.

MS. HOLLOWAY: Maybe.

DR. MUÑOZ: As of right now, you're comfortable with the response you've received on this particular case.

MS. HOLLOWAY: As of today, yes, we are.
MS. BINGHAM ESCAREÑO: Mr. Chair, I have a question then. So is there anything that can happen right now in this agenda item right now that would be of concern to requesters or applicants that something would be resolved right now and that they would not continue to have the opportunity to press on either side?

MR. OXER: Does any opportunity foreclose or does it constitute any limitation on their appeal, anything that you're going to present today?

MS. HOLLOWAY: Not that I know of.

MR. OXER: Given that that's the case, I understand, we're trying to do something different, we're evolving our program, we're evolving this process, so we're evolving how we understand it and asking questions like we're supposed to do. That said, if nothing that we are going to do today would be more than ask you to get some more information, or based on this particular rule we need some more data points to make an informed decision, if that's the case and there's no foreclosure or limitation on what the applicants have as options as we go forward, just a question to everybody out there who raised their hands to comment on an item, does anybody here still want to say anything about any of these, knowing that there's going to be nothing that we'll do today that limits your options in future meetings? Got some winners.
out there. Okay.

Did you have anything else you wanted to say on that item, Cynthia?

(Inaudible response.)

MR. OXER: I've got a recommendation to the Board as the Chair's direction of what we're going to do.

Let's take a quick executive session break because I want to hear some guidance from general counsel and the E-D. It's going to take a few minutes to do this. We'll come back here, it's 10:04. And everybody knows there's a script we have to do. This has to be on the record for us to go formally into executive session.

The Governing Board of the Texas Department of Housing and Community Affairs will go into executive or closed session at this time. The Board may go into executive session pursuant to Texas Government Code 551.074 for the purposes of discussing personnel matters, pursuant to Texas Government Code 551.071 to seek and receive the legal advice of its attorney, pursuant to Texas Government Code 551.072 to deliberate the possible purchase, sale, exchange or lease of real estate, and/or pursuant to Texas Government Code 2306.039(c) to discuss issues related to fraud, waste or abuse with the Department's internal auditor, fraud prevention coordinator or ethics advisor.
This closed session will be held in the anteroom of this room, JHR Hearing Room 140. The date is June 30, 2016, the time is 10:05. We'll be back in our chairs here at 10:30, that's 25 minutes, because we're going to take a break anyway and that gives us the chance to do the executive session and take a break and be back here at 10:30. Is that clear to everybody? See you at 10:30.

(Whereupon, at 10:05 a.m., the meeting was recessed, to reconvene this same day, Thursday, June 30, 2016, following conclusion of the executive session.)

MR. OXER: We'll be in order. The Board is now reconvened in open session at 10:38.

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.

So we have an open item, item 4(e).

MS. HOLLOWAY: This will be item 4(g).

MR. OXER: Actually, 4(e) is open.

MS. HOLLOWAY: Oh, I'm sorry.

MR. OXER: That's all right. Just sit still, we'll get to you, trust me.

With respect to item 4(e), motion by Mr. Goodwin, second by Mr. Gann to approve staff recommendation on item 4(e). Is there any other request
for public comment? Is there any Board member that has a question?

(No response.)

MR. OXER: All right. With respect to item 4(e), motion by Mr. Goodwin, second by Mr. Gann. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none. It's unanimous.

With respect to item 4(g), now you get to play, Marni. And I'm going to make a layman's attempt at summarizing what I think is going on, at any rate. In our effort this year to use this process to replace the challenge process, this is the requests of third party administrative deficiency. Right?

MS. HOLLOWAY: Correct.

MR. OXER: Okay. For those items for which there are issues, we're going to go through each one of these, you can do a quick summary of each one of them. We know that there are questions regarding five of them, I've got those marked, we'll take those. But with respect to each one of the others, we'll just kind of mark through those, and then at the end we'll take our request for public comment on a number of these, I'll make the
suggestion or the request of the staff to explore these
some more and gather some more information.

    I think we've heard comment on application
16012 and you've made a summary of it.

    MS. HOLLOWAY: Yes.

    MR. OXER: Why don't we run through them one at
a time in order, as they are here, knowing we'll take the
four that remain that have requests for comment which is
16057, 16117, 16118 and 16380. 16387 we're going to
return as an appeal that Toni mentioned.

    MS. HOLLOWAY: Yes.

    MR. OXER: So that one is essentially taken
care of but you'll identify the information, the point of
question or the point of challenge on it.

    MS. BINGHAM ESCAREÑO: Mr. Chair, thank you.

Was there anybody for 16026?

    MR. OXER: Nobody raised their hand.

    MS. BINGHAM ESCAREÑO: Okay, very good.

    MR. OXER: Particularly for 16057 and those I
just listed, there will be issues.

    MS. HOLLOWAY: Move those to the end?

    MR. OXER: We're going to move those to the end
and we'll hear your comments on those one at a time as we
get those in. So we've dealt with 16012. Let's go to
16026, what was the issue? Are you summaries like 30 to
60 seconds on each one of them?

MS. HOLLOWAY: I can do them very quickly.

Application number 16026, Laguna Hotel Lofts. The request actually falls into three categories.

MR. OXER: And to make just an advice of the Board here, our intent is not to limit anybody's opportunity to speak, we're trying to be efficient with everybody's time here if these issues have been dealt with. All I want is a summary of the issue that was dealt with and what the nature of the appeal was. Okay? And if any of the Board members have other interests, we can certainly add to that. All right, you're on, number 16026.

MS. HOLLOWAY: 16026, Laguna Hotel Lofts. This request actually falls into three categories. One of them on mandatory development requirements questioned parking that was available on site and also questioned accessible units. Staff has issued an administrative deficiency regarding the parking. The applicant responded and staff has closed that item.

The next issue was on development cost schedule. Those items will be addressed during the underwriting process by the Real Estate Analysis Division, so staff has determined that those issues should not be part of an administrative deficiency at this time. REA
may issue a deficiency as they work through the
development cost and market analysis questions.

There was a question regarding undesirable site
and neighborhood characteristics, and the requester
suggested that there was blight in the neighborhood.
Staff performed a site inspection, went to Cisco and
looked at the site, and determined that the area
surrounding the proposed development is not blighted.
Staff has reviewed the request, response and site
inspection results and determined that this matter has
been resolved.

Application 16029, Baxter Lofts. You'll
remember this is the item that you've addressed in past
Board meetings regarding the early college high school in
Harlingen. The applicant had appealed, the Board denied
their appeal, this matter is now closed.

16057 is one that we're going to take to the
end.

16071 Bluff View Senior Village. The requester
questioned whether the site design and development
feasibility report contains sufficient information
regarding fire protection and asked us to independently
verify the applicant's market analysis. The information
included with the request didn't provide confirmable
evidence that allowed staff to determine whether an
administrative deficiency request is substantiated, and
did not point to a misapplication or violation of a rule.
The market analysis review will be performed by the Real
Estate Analysis Division during the underwriting process,
and any deficiencies related to that market analysis will
be addressed at that time.

16117 is one that we're taking to the end;
16118 is also going to the end.

16161 Elysium Park. The request asked the
Department to investigate whether a letter of support from
a nonprofit could count for points under input from
community organizations. Because this was not a priority
application, staff did not address this request.

16164, Saralita Senior Village. The request
asked the Department to review the proposed acquisition
price for the land for the development. Apparently
there's a purchase agreement for a larger property that is
tied to the proposed development site. The request also
asked the Department to review financial support from the
lender and whether the applicant had stated that they
would conform to requirements of the Davis-Bacon Labor
Standards for the direct loan funds.

Regarding the acquisition price, review of this
issue will be performed by the Real Estate Analysis
Division during formal underwriting of the application.
If there is a deficiency there, that will be issued by REA.

Regarding the presence in the application of an operating pro forma from the lender, we did find that document in the application form. And we did issue a notice of administrative deficiency regarding the form certification for Davis-Bacon Labor Standards. In response to that notice, the applicant provided a revised form indicating that they would, in fact, comply with those requirements. Staff is considering that matter closed.

16169, Havens of Hutt. The requester questioned whether the application qualified for a point under proximity to important services, claiming that neither the Hutto Westphalia Market nor the H.E.B. grocery store listed in the application meets the Department's definition of a grocery store. Staff issued an administrative deficiency on this item. The applicant conceded that the H.E.B. does not qualify at this point because construction of that grocery store has not proceeded to the point that it qualifies under our rule, but did provide a good deal of information regarding the Westphalia Market, the items that they carry within that store. Staff went to Hutto to verify and has determined that it is eligible as a full service grocery store, and
we're considering the matter resolved.

16263, Starlight. The question is whether the application meets the requirements under 11.3(b) regarding twice the state average per capita. The request provides evidence of annexations by the City of Edinburgh in December 2013 and March 2015 and they included portions of the Murillo census designated place. The requester claimed that those annexations and the resulting loss of population by the Murillo CDP raises a per capita count of units to more than twice the state average.

In examining this issue and looking at the rule, it says that the proposed development is located in a municipality, or if located completely outside a municipality, a county. If those areas have more than twice the state average per capita of units, then resolutions are required by either the municipality or the county. This particular rule does not recognize census designated place in any way.

Because the development site is located in Hidalgo County, the resolution regarding twice the average per capita is not required, and staff is considering this matter closed.

16292, Avant Canyon. The requester questioned whether the application identified the minimum six community assets within one mile of the development site.
Staff reviewed the application and determined that a minimum number of community assets are valid and the issue should not be the subject of a deficiency, and we are considering that matter closed.

16373, Avondale Farms. Questioned whether the application meets the requirements under 11.9(e)(3) regarding pre-application participation because the application changed from elderly limitation at pre-application to elderly preference at full application. The pre-application points require that the proposed development serve the same target population from pre-app to full app. When looking at the definition of target population, it says the designation of types of housing populations shall include elderly developments and those that are entirely supportive housing. All others will be considered to serve general populations without regard to any sub-population. The definition of elderly development includes both elderly limitation and elderly preference, so the operative there is elderly.

Staff has made a determination that this should not be the subject of an administrative deficiency, and we're considering the matter closed.

That's all the quick ones. Are there any questions at all? I kind of ran through them.

MR. OXER: And I would point out to put onto
the record, this is in an effort to make essentially the
former challenge process, which is now the request for
administrative deficiency, as transparent as possible, and
to give some indication to those who are making those
requests that that information has been evaluated by the
staff and heard by the Board.

MS. HOLLOWAY: Evaluated by staff and
absolutely discussed internally, thoroughly vetted, and of
course, as I mentioned earlier, all of that information is
included in the application that's posted online.

MR. OXER: Now, one of the other collateral
benefits that accrues from doing it in this fashion, it
gives us an opportunity to identify further quirks. We've
been stomping out those little critters for a couple of
years now, but there are always those, and issues where
the QAP is unclear or requires more specificity to make it
clear to applicants which side of the line they come down
on on those.

So from my count, we've got four of these
applications: 16057, 16118, 16117, and 16380. Anybody
else got anything they want?

(No response.)

MR. OXER: Let's go through this one at a time.

Let's go do Silverleaf at Mason. Everybody who wants to
speak on these four items, get up here in the first two
rows on our left.

Get started on that one, Marni, while they're coming up. Those of you who are speaking on 16057, get in the first row.

MS. HOLLOWAY: Application 16057, Silverleaf at Mason. The requester questioned whether the primary market area included in the market analysis reports accurately the draw demand for the proposed project. The information provided with the request does not allow staff to determine whether an administrative deficiency request is substantiated, and did not point to a misapplication or violation of a rule. The market analysis review will be performed by Real Estate Analysis upon the formal underwriting of the application. Administrative deficiencies related to the market analysis may be generated by REA during that process.

MR. OXER: So from our standpoint, from the agency's standpoint, this is just processing through and there's going to be another sieve it has to get through.

MS. HOLLOWAY: Yes.

MR. OXER: Were this to be the case, were the challenger to be accurate in their request, it would get caught at a later date down the process.

MS. HOLLOWAY: Yes, it would.

MR. OXER: Okay. All right. With regard to
this item, application 16057, do you have a request to speak? I remind everybody we're on a short clock, we'll do three minutes.

MR. KROCHTENGEL: My name is Zachary Krochtengel from State Street Housing.

And the first question I would have is actually something that might be resolved by Marni or Brent. If it goes through REA and there is no deficiency from REA, do we still have the right to ask for a deficiency and to have our case be heard after the Real Estate Analysis Division is done with their analysis?

MS. HOLLOWAY: I would imagine that the next opportunity to address a question with this application, if it makes it through the process, would be at the late July meeting when we're coming forward with awards.

MR. OXER: Does that answer your question?

MR. KROCHTENGEL: I'm not sure if it does or not, but we could bring it up.

MR. OXER: I would reiterate for everybody that what we're doing today is informing in an abundance of effort to provide transparency to the process we're using to go through since it's at least modestly modified this year. In an abundance of effort to provide that transparency, we're doing this as a report item, and I would reiterate, nothing we're doing today limits your
option to come forward as an applicant to appeal.

Tim, have you got a comment?

MR. IRVINE: They don't have a right to appeal.

I would say as the underwriting reports are posted, if anybody wants to make public comment on an item that pulls that in by reference, you can certainly always make public comment. I think if the Board has questions about the correctness of the underwriting, you can always ask questions. So I would say that would be really the only process that would be left in that regard.

MR. OXER: We'd point out this creates no new rights of appeal, no new rights to challenge, no new rights of appeal.

MR. KROCHTENGEL: So then we would like to bring it to the next Board meeting.

MR. OXER: Okay. And the issue you wish to bring?

MR. KROCHTENGEL: We would like to challenge that our deficiency is a valid deficiency and that we do have information that would lead to a deficiency in their market study.

MR. OXER: Okay. So that's the market study and the products of the real estate analysis. Is that right, Marni? Brent, up or down? Okay. I gather that's when things come along. Can you tell me? Explore this a
MR. ECCLES: Let me just ask for purposes of the process, what was the substance that you've already brought forward and what was the evidence and documents that you brought forward in your initial request for administrative deficiency.

MR. KROCHTENGEL: Absolutely. I'll just give you a brief overview. I'm not a market study expert. We would bring in a third party market study expert to do a formal review, however, looking at their application, their primary market area is 2,900 square miles and stretches 57 miles away from their site. They had to take in three different counties and their demand from three different counties to create the correct demand for these units.

The way that I would kind of describe it is almost as a gerrymandering by pulling in as much demand as possible until you get to the correct underwriting for the amount of units. If you were to only use the county that they're in, and their site is pretty close to the middle of the county and there's 24 miles to the county border from their site, the demand does not meet for the application that they put in. They brought in Brady, they brought in Mason County, McCulloch County, and Menard County. Had they only used Mason County where their
project is, the demand would have been 12.5 percent which is well over the 10 percent threshold and the Mason County population is only 4,000 people in the entire county.

So we brought forth that information, using a third party market study to show how a correct PMA would have been drawn for this application and challenged that, and that's why we feel that we have a valid deficiency challenge.

MR. OXER: That would essentially come out in the real estate analysis. Is that correct?

MR. KROCHTENGEL: Which is why I was asking if we still are reserving our right to challenge.

MR. OXER: Very valid point. That's why I'm trying to be clear on it.

MR. IRVINE: And Brent is the guru on this, but my layman's take is that REA always looks at the reasonableness and the appropriateness of these types of things, and I don't really view it as per se an administrative deficiency. It's simply a bunch of relevant information that are factors that the pros consider.

MR. OXER: A lot of this, as these applications go through this process, they'll get sieved out, and you're anticipating, based on information that you have it making it through a sieve that it hasn't reached yet.

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MR. KROCHTENGEL: The issue we have is that the QAP has a certain challenge period and if that challenge period weren't extended beyond -- I know that the Real Estate Analysis Division is busy, they're going to keep doing this, and if we don't have any recourse after the Real Estate Analysis Division, because I don't know what Brent is going to do, I assume that he does the right thing, but if we have a disagreement with Brent, I just want to have that reserved right.

MR. OXER: It's on the record now, it's on the record now.

Brent, get up here.

MR. STEWART: Brent Stewart, Real Estate Analysis.

A couple of points. One is the administrative deficiency process says that you point to something in the application that is of error, doesn't meet some rule, what-have-you. A market study is a third party market analyst's opinion about what the market should be, what the market area should be, the analysis supporting the deal pursuant to the Real Estate Analysis rules. It's very difficult for there to be an administrative deficiency in that process because it's an opinion. Now, if they have calculated something incorrectly or they have specifically done something against the rule, that part
would be an administrative deficiency, a request for
administrative deficiency that we would deal with.

REA has an ability when we review market
studies, we review all kinds of market information,
including market information that we go get independently
of the market study. The REA rules specifically says that
we're able to do that and that that's the information that
we will use in our analysis. So we do take in a lot of
information regardless of whether it's in the market study
or not, but it's not an administrative deficiency.

MR. OXER: So essentially -- this is going to
be a cold review of your point here, Zachary, but bear
with me for a second. Okay?

What you're saying is the market assessment is
an opinion, staff generates an opinion, and Zachary has
got an opinion.

MR. STEWART: That's correct.

MR. OXER: Okay. But we get to say who we're
going to live with.

MR. STEWART: The REA is going to say who we
live with, and another applicant cannot appeal an REA
report. That's also stated in the rules. If they bring
to you their opinion and convince you that it's different
or that their opinion should be used, that's up to you.

Does that make sense?
MR. OXER: Yes, makes sense.

All right. I know you want to finalize. I'll give you 30 seconds to finish up if you've got anything else you want to say, Zachary.

MR. KROCHTENGEL: I guess that we would probably like to think it over for the next two weeks and have the possibility of bringing our opinion to you in two weeks.

MR. OXER: I believe that's certainly -- or is it? What's the story here?

MR. ECCLES: I don't think that that's a problem, but I think that we're using different terms to describe what has always existed, and that is what you would essentially be bringing is a third party opinion that you have procured that might disagree with what comes from Brent's shop and already exists in the application, but REA is going to do its analysis. You don't have any appeal right either of REA's analysis or a special new appellate right that comes off of Section 11.10 of the QAP, it's just that next week, if REA is done with its analysis, or perhaps even before, you could bring before the Board: Here is a different market analysis for consideration. That doesn't mean that there's going to be an action item to accept one market study or another because that's not an appealable thing. As long as you
understand that that's the process that's going. It's essentially another instance where you can provide public comment that will include some things that you're bringing forward, but you don't have any right of appeal of a market analysis.

   MR. KROCHTENGEL: Okay. Thank you.
   DR. MUÑOZ: So Beau, we would listen to that content for the purpose of listening?
   MR. IRVINE: I think that REA is aware of the issue, it's one among a zillion factors that they'll think about as they go through their analysis, they will form their conclusions and those are the conclusions that the Board will act upon. That will be the record that supports how you deal with whether this deal is financially feasible.
   DR. MUÑOZ: And so Tim, just for my clarity, we hear that report.
   MR. IRVINE: They're posted online and they're available all the time.
   DR. MUÑOZ: And someone would then say here's additional information that can't bear on?
   MR. OXER: It's not that it can't bear. To be clear, as a member of the public, Zachary, you have the right to present information that you think we should consider. You opinion that we should consider does not
constitute a writ of mandamus that we include it, but we
have the option to do that. Okay? If it's compelling
evidence, we certainly could consider that.

I have to tell you we're fairly strong on REA, as you might guess, but your point is made. I wouldn't
suggest to offer guidance, but maybe a few intimate conversations with Brent might be in order.

MR. IRVINE: And I would say that the way that this particular item is framed, there really isn't
anything to bring back to this Board by way of a more in-depth report. REA generates its underwriting report and that's the only issue that's out there.

MR. OXER: We have our real estate group so that's who we have to deal with.

MR. KROCHTENGEL: Absolutely.

MR. OXER: We appreciate your comments.

MR. KROCHTENGEL: Thank you.

MR. OXER: Mike, do you have a comment you want to make on this one?

MR. SUGRUE: Mike Sugrue, Stoneleaf Companies. Since it's my deal, we are working with REA to straighten this out and the numbers are going to be what the numbers are.

MR. OXER: It's either going to work or not.

MR. SUGRUE: Exactly. And as I've told my
market analyst, I don't ever want to do a deal I have to feed, it has to be economically feasible, so we're working down the right path also. I don't want anyone to think that we're not doing our job.

MR. OXER: This is an interpretation of the situation out there which I like opinions. I could tell you a really off-color joke about everybody's got one and nobody wants anybody else's either.

MR. SUGRUE: Exactly.

MR. OXER: Thanks for your comments, Mike.

Mike, you've got to sign in.

Okay. Does that cover that one? Marni, let's go to the next one, 16117. Who's going to speak on this one?

MS. HOLLOWAY: If I may sort of join in the fray a little bit before we go on to the next one.

MR. OXER: Gee, why not?

(General laughter.)

MS. HOLLOWAY: Why not.

The third party request for administrative deficiency is an opportunity for people or entities to bring new information into the mix. It is not designed to create an opportunity to comment on our scoring process, to have that discussion. That's the reason that it exists. As Brent mentioned, other applicants do not have
appeal rights for applications, and there's also a section on the rule regarding applicant eligibility that's about fomenting opposition to other applications, and there is the possibility that if someone goes too far with this that we're going to be having a conversation about is this person creating opposition to this application. So I just wanted to make those points as we're moving forward.

MR. OXER: I think it bears restating that this is a new approach to this aspect of the round of this process and we're trying to make sure we get our stance on it proper and we're taking the right approach in making that deliberation as open and transparent as possible.

All right, 117.

MS. HOLLOWAY: Okay. 117, Indian Lake Apartment Homes. The requester questioned whether the applicant had failed to properly notify all required individuals which would render the application ineligible for pre-application participation points. Staff reviewed the request and issued an administrative deficiency to the applicant. The applicant submitted a fully processed certified mail receipt indicating that notifications were delivered. Staff has reviewed the response provided and determined that the matter was resolved.

MR. OXER: Until it's resolved, but I gather you don't think it's been resolved.
MR. HARTMAN: Mr. Chairman, members of the Board, Michael Hartman from Roundstone Development.

I think more than anything else I'd like to bring to you the potential ramifications of the resolution of this matter. Based upon the way this was resolved, if I file an application next year in Dallas, now the rules say I have to notify the city council, that's 15 members, the county commission is five members, the ISD is ten members, but based upon --

MR. OXER: A lot of stamps. Huh?

MR. HARTMAN: -- based upon what has been determined, I don't have to notify all 30 of them anymore. I can send one letter to the mayor of Dallas, ask the mayor to distribute it to all the other city council members and if I get a letter back saying that he or she has done that, I'm done, I've met my notification requirements. Same thing for the ISD, same thing for the county commission. So instead of sending out 30 notifications, I'm sending out three because that's what was ruled on here, that the only person, according to what was sent back from the deficiency, the only person that they actually showed a mail receipt from was the mayor, along with a letter addressed to the mayor, sent with the notification saying that mayor, please distribute this to all the other city council members, and the mayor sent
back a letter saying yes, I confirm that I distributed this to all the other city council members. So there were no receipts showing that the individual city council members acknowledged getting it but that the mayor had distributed it.

So I just want you to understand that that's the new standard that we have for public notification now.

That's all.

MR. OXER: Okay. Point made, Michael.

Any questions from the Board?

(No response.)

MR. OXER: Marni, did you have a follow up on that?

MS. HOLLOWAY: No.

MR. OXER: Okay. And what's you're saying is, Michael, do you feel like that needs a clarification in the QAP?

MR. HARTMAN: I think it does, because I would say if you took a survey around this room, other than the one person that did it that way, I'll bet you everybody else would have sent out 30, everybody. Thank you.

MR. OXER: Well, it sounds like something we might put in next year's QAP, if nothing else. And that's part of the benefit of doing this to see where those edges are.
MS. HOLLOWAY: Absolutely.

MR. OXER: All right, 118.

MS. HOLLOWAY: 118, The Standard on the Creek.

We actually have two groups of requests regarding this application. I would suggest that we take first the one regarding the lender letter and then we can move on to the other group of requests.

MR. OXER: Okay. You folks in the front, there's two items on this application. Everybody that wants to speak on this item, get up here. Don't be shy, get in the front row.

Okay. Go for it, Marni.

MS. HOLLOWAY: Application 16118, The Standard on the Creek. Two requesters asked the Department to review its scoring of the application under 11.9(e)(1), financial feasibility, specifically, that the applicant did not submit an lender approval letter on its letterhead containing the required language necessary to be eligible for either 16 or 18 points, nor was such language incorporated in a lender term sheet. The request questioned whether this missing information should be curable through an administrative deficiency.

The request refers to language from 11.9(e)(1) of the QAP which states: "Due to the highly competitive nature of the program, applicants that elect points where
supporting documentation is required but fail to provide
any supporting documentation will not be allowed to cure
the issue through an administrative deficiency."

The application included a lender letter
without the template language. The language in question
is not required to be in a separate letter, so that since
the application had included a letter, it is within the
administrative deficiency rules for staff to request a
clarification. Staff issued an administrative deficiency
and requested that clarification and the applicant cured
the deficiency to the satisfaction of the rule by
providing that language.

Clarification of application documents provided
by third parties is fairly common in the review process,
we do it with scoring items, we do it with threshold
items. I would bet everybody here in the room has
received one.

MR. OXER: Been down that road at least once.

MS. HOLLOWAY: Right. So long as the document
is included with the application, staff has held that it
can be corrected. Completely missing documents are
considered to be material deficiencies that cannot be
cured. Further, the letter and pro forma submitted with
the application meets the requirement in statute for
financial feasibility, and staff has considered this
matter closed with receipt of the response to the administrative deficiency.

MR. OXER: Okay. Who on the row wants to speak to this part of that application? Donna.

MS. RICKENBACKER: Good afternoon. Donna Rickenbacker with Marquis.

I'm one of the two challengers, if you will, that submitted a third party administrative challenge with respect to the financial feasibility scoring category and the way staff evaluated the documentation submitted with that application to support that scoring category. We did receive a determination from staff, we received it on Monday in connection with a challenge that we submitted on May 3. That determination basically implied that we didn't really have a right under our current third party administrative provisions this year to have submitted a challenge on the way that the staff was evaluating an application. I mean, I know this is a new process this year, but I don't suspect that the intent was to squash a challenger's opportunity to question the way an application was being challenged.

Additionally, with respect to the documentation that was submitted at application, it did not include the necessary information to support this scoring category, and that was the intent and the grounds by which we
submitted that challenge. I do believe that there are some issues here that the Board really does need to take a closer look at and determine for yourselves whether or not that documentation was submitted, so I just respectfully request that you do so at your July meeting.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: So your point is that Marni says that the document is included but the information is not there, you can repair that through an administrative deficiency, but if the documentation is completely missing, that's a material deficiency that cannot be cured.

MS. RICKENBACKER: It's a deficiency that cannot be cured under our rules. Yes, sir.

MR. OXER: Right. So you're saying that there wasn't a document.

MS. RICKENBACKER: Yes, sir. Correct. The necessary documentation to support that scoring category was not included in the application.

MR. OXER: Okay. Thanks for your thoughts on that.

MS. RICKENBACKER: Thank you.

MR. OXER: And I'll remind everybody to make sure you sign in just so we can keep track of the bullet
holes.

Did you want to speak to this component of this challenge, the lender letter. We're taking those a piece at a time.

Sarah, did you want to talk to that?

MS. ANDRE: Yes.

MR. OXER: You know enough not to be shy. Get up there in the front row where you're supposed to be.

(General laughter.)

MS. ANDRE: I didn't think I was going to have to speak to this. My name is Sarah Andre, and I'm a consultant on this project.

I'd just like to say that with regard to the lender letter, I fully support the staff's decision on this. I did not bother to go through the 200 applications I've dealt with in the past to see how many times this exact issue has come up. This is very clearly a deficiency item. A letter was submitted by the lender, it's a lender who has submitted numerous letters through this program many times, I am certain, and there was one sentence that was not in the letter. It's very clearly a deficiency item. It was cured immediately and this exact type of thing has been cured through the deficiency process for years at this point.

So I would just encourage you to think about
that if you want to bring this kind of item to the level of a challengeable item. I just don't think it is one.

MR. OXER: Okay. Good point. Thanks for your comments.

Marni, next component of that application.

MS. HOLLOWAY: Okay. So the next set of questions on this application, 16118, The Standard on the Creek, didn't really come in as a formal third party request for administrative deficiency. We have received correspondence from State Representative Harold Dutton, and also from a number of community members. In order that we had sort of a structure around reviewing these items and asking the developer to respond, we've chosen to treat these as requests for administrative deficiency.

So staff has received two injuries raising issues about whether application 16118 is ineligible under 10 TAC 10.202(1)(k) because of material misstatements or omissions in connection with the application. This is an eligibility question that's been raised. One of the inquiries came in the form of several letters from State Representative Harold Dutton which are included in your Board book. The second inquiry came from a group of persons living near the proposed development.

Since the issues from both Chairman Dutton and the individuals in the Fall Creek neighborhood overlap and
reference each other, they've been considered together.

For purposes of this discussion, though, I think it makes sense to separate them out just a bit. I believe that we have a staff member from Representative Dutton's office here who would like to address the Board, so we can take care of that.

State Representative Dutton asked the Department to review whether the points awarded to the application based on a letter of support that he provided should be withdrawn due to what the chairman describes as fraud and material misrepresentations engaged in by the applicant and whether such misrepresentations should render the applicant ineligible under 10.202. The chairman asserts that the letter he provided that allowed the application to qualify for eight points under community support from a state representative was induced by the applicant's material misrepresentations as to the applicant's policy on ex-felons and the declarations that the residents of Fall Creek were in full support of this project. As indicated in Chairman Dutton's letter of June 3, these were the two issues on which he predicated his support of the application.

There's a great deal of information in your Board book about this question going back and forth. When we sent Chairman Dutton's letters to the applicant, they
have confirmed that they will consider ex-felons on a
case-by-case basis, so they will perform background checks
but they will consider on a case-by-case basis, and
accordingly, we have determined that there was no
misrepresentation on that issue.

On the second point, while it's clear that
there are a number of people who live near the development
site who are currently opposed to this construction --
you'll remember that a group addressed you previously --
we have not been able to find evidence that the applicant
knew of that lack of support prior to his conversation
with Chairman Dutton. These are really questions about
who said what and it's been very, very difficult for staff
to come to a conclusion. We're not finding the evidence
that says this is what actually happened. Because we have
not been able to come to that conclusion, in fact, on this
question it winds up going by default to the developer.

Do we want to stop with that one and then take
on the next one, or do we want to go all the way through
and then talk about both of them?

MR. OXER: And who's here from Representative
Dutton's office?

MS. HOLLOWAY: There's a representative.

MR. OXER: And we're happy to have you, by the
way.
MS. DAVIS-WILLIAMS: My name is Helen Davis-Williams. I'm with the office of Representative Dutton. This is a letter to Executive Director Timothy Irvine from my boss, Representative Harold V. Dutton, Jr.

"Dear Mr. Irvine, I have communicated with you in writing and in person opposing The Standard on the Creek application and gave you specific examples of deception, fraudulent misrepresentations committed by the applicant to secure my letter of support. I felt reasonably assured on several occasions that my letter would be withdrawn and associated points deducted from this application. I received a letter from your staff last night that you have concluded otherwise and intend to allow my letter of support to stand in spite of assurances to the contrary.

"I am terribly disappointed by your actions. I strongly believe that this applicant violated the rules by committing a fraud and my letter of support should be withdrawn. It has also come to my attention that the Fall Creek neighborhood brought similar concerns to your attention. We cannot allow applicants to say whatever is expedient to his or her audience to get what they want, including making knowingly false statements to elected officials, neighborhood organizations and MUD boards. This type of behavior undermines the program and your
leadership and should not be allowed.

"I also want you to explain staff's position on the following matters that relate to specific errors and omissions in The Standard application and in the manner in which these items were evaluated by your staff. The first deals with the financial feasibility of the project and one that I asked that you address in prior written communication. The second deals with information obtained by the neighborhood through an open records request to TDHCA.

"1. Financial Feasibility. The Department received two separate letters challenging points claimed by the applicant under the financial feasibility scoring category, each of which recognizes that the applicant failed to provide specific documentation in its application to qualify for these 18 points.

"One of the challenges makes the Department aware of the fact your staff allowed the applicant to supplement its application and submit the required financial feasibility information after the applicable deadline and took exception to this rule violation by pointing out in bold that submission of documentation to support scoring criteria after the application submission deadline is explicitly not allowed under Section 11.9(a) of the QAP.
"If the rules do not allow an applicant to supplement their application with point-based scoring information through the administrative deficiency process, then this applicant should not be given any special privileges by the Department to do so, and I request that you re-evaluate these claims and make the necessary scoring adjustments.

"2. Insufficiency payment of application fee. The Fall Creek community learned through an open records request to TDHCA that the applicant failed to pay the required application fee in a timely manner and then when they were made aware of the error, submitted the missing fee with a check that was back dated so that it corresponded with the application submission deadline. It is my understanding that the rules specifically state that the full amount of the required application fee must accompany the application, and if this was not done, which it appears that it was not, then The Standard application should have been terminated. The documentation provided to the neighborhood also shows that your staff recommended that the application be terminated based on the fee error. Your staff went on to say that the consultant of the applicant made similar mistakes with other applications. Why did this termination not take place and what is the status of the other applications where this similar error
"I am very disappointed to learn about the matters set forth in this letter. Staff should strictly interpret and implement the rules that apply to the tax credit program in a transparent and impartial manner. If The Standard applicant did not provide the documentation necessary to support the financial feasibility scoring category in its application then it should not be eligible for the 18 points claimed, and if this applicant did not pay the full amount of the required fee in a timely manner, then its application should be terminated.

"I intend to have my staff read this letter into the record at the Board meeting of June 30, 2016. I respectfully request that you review the matters raised in this letter and explain why TDHCA has chosen to approve what I believe is a seriously flawed application.

"Best Regards, Harold V. Dutton, Jr."

CC is to Honorable J. Paul Oxer, PE, Chairman, via email, and to the TDHCA Board members, the Honorable Joe Straus, Texas House Speaker, Honorable Carol Alvarado, and the Fall Creek HOA.

And if you have any questions, you are to refer them to Representative Harold V. Dutton, Jr.

MR. OXER: Well, please tell the chairman we appreciate his best regards, and I think it's fair to say
we'd like to get a little more information on this particular issue.

MS. DAVIS-WILLIAMS: Any questions, Ms. Bingham?

MS. BINGHAM ESCAREÑO: Just a question for staff. So Marni started this by saying that staff categorized this or recognized this as a third party request for administrative deficiency. Is that correct?

MS. HOLLOWAY: Correct.

MS. BINGHAM ESCAREÑO: Okay. That's it.

MR. OXER: And while we're not going to make a decision on this today, obviously there's some timing questions in here, so we'll have a summary on this towards the end, but I want to see some dates and numbers on this one.

MS. HOLLOWAY: Okay.

DR. MUÑOZ: So Marni, you're going to get into this further, and I appreciate your statement earlier about our inability to completely sort of adjudicate this one way or another, but I guess what you're hearing is give it another chance. I mean, some of these statements are strong on both sides. I through I heard some new comments in this letter that was just read right now, and I don't think we have a copy of that letter in our Board book.
MS. HOLLOWAY: Of this letter, no.

DR. MUÑOZ: Of this letter.

MS. HOLLOWAY: You have the other letters.

DR. MUÑOZ: Yes. I've read the three letters.

But my point is I thought I heard some new information in this letter here that you will, I presume, include in your sort of reexamination.

MS. HOLLOWAY: Yes, we absolutely can do that.

MR. OXER: The reexamination will be something we'll address, we'll get down to it. My intent in all of this is to hear each one of these and then come back, because this one sounds like it's okay, this one doesn't sound like it's okay, let's go get this, tell you want we want, some new information or further process on all of this once we get to the end of these.

You have a third point on this particular application?

MS. HOLLOWAY: The other part of this third party request for administrative deficiency on the Fall Creek application came from the Fall Creek Homeowners Association.

MR. OXER: And who represents them? A lot of hands.

Hold on just a second.

DR. MUÑOZ: Marni, just a quick question. I
thought in somebody's letter it said something to the
effect of this homeowners association not being registered
with the Department. Does that sound familiar?

MS. HOLLOWAY: Yes.

DR. MUÑOZ: But you just recognized it. That's
why I'm asking.

MS. HOLLOWAY: That is in fact the case that
it's not registered with the Department as a neighborhood
association that would receive notice if an application is
submitted for a development within their boundaries. So
that's the line there. If this development had been
within the boundaries of the homeowners association and if
the homeowners association had been registered with us,
they would have received notice at pre-application.

MR. OXER: Pre-app.

MS. HOLLOWAY: Yes.

MR. OXER: Okay. Hold it just a second.

MR. LIKOVER: I wanted to respond to
Representative Dutton's letter.

MR. OXER: Okay.

MR. LIKOVER: My name is Clayton Likover. I'm
a representative of the applicant.

Board, I appreciate you taking the time. I
also appreciate you taking the time to review all the
materials that we submitted in response to the two
challenges that we received. They're lengthy, they're 40-plus pages each. The truth is, and the written evidence very clearly shows, that this neighborhood and now Representative Dutton, due to pressure from the neighborhood, is willing to say and do anything to try to kill this project. It's a great project, it should happen, but they don't want it.

They are throwing all kinds of allegations and hearsay against us which did not happen. The board's reviewed and certified own meeting minutes back up what we say happened. The lengthy email, 40 emails with Representative Dutton's office back up exactly what we say happened. There is nothing in writing or any other way that backs up their allegations against us.

We've tried to stay out of the mud on this with them but the truth is, Board, that there is a lot of very nasty NIMBYism going on. Their own words, they found a loophole to derail our project. They knew that a letter of support couldn't be rescinded or if it is rescinded it doesn't remove the points, that they would then go after the loophole of alleging fraud and that way surely then the points couldn't still be awarded to the applicant. We've held back on releasing some of the nastier stuff that we have from them, but it's not pretty.

To be honest, we're very frustrated because we
feel like we've responded in excruciating detail to the
allegations against us, we've done everything that was
asked of us by Representative Dutton's office. The TDHCA
tells representatives make sure you want to give your
letter of support, don't give it too early.
Representative Dutton never met with us, we emailed with
his office multiple times, we met with his chief of staff
briefly. His one request to us for support -- no question
about neighborhood support, didn't even ask us -- his only
question of us, the applicant, was will you consider
people or potential residents with criminal backgrounds on
a case-by-case basis. And we talked about it internally
and we said that's reasonable, and we responded yes, we
would. And then when we met with the MUD, they asked us
about the project and Matt told them what we tell
everyone: that we do income and background checks on all
potential residents.

So everything we've done is appropriate and our
opposition is trying to find loopholes to submarine a
project, unfortunately, through fraud allegations with
nothing substantiated.

MR. OXER: Okay. We appreciate your comments.
Let me remind you to sign in. Make sure everybody signs
in.

I think it's fair to say on this one there's
enough question on both sides that we're going to want
some more exploration of this one, Marni.

Is there anybody else that wants to speak? Is
there any other component to this that we need to
consider? There's more speaking, but is there any other
aspect that we need to look at on this one?

MS. HOLLOWAY: The information that we received
from the homeowners association in part ties with the
information from Representative Dutton regarding claims
made about ex-criminals being allowed to live at the
development. They have provided meeting minutes -- I
think those were referred to -- for the MUD, the local MUD
board of directors. There is a great deal of detail in
those minutes, but the criminal background question does
not appear in those minutes. And I actually requested
those minutes, I'm the one who got them.

One of the issues that the homeowners
association has raised is an applicant claim of support
from the Humble ISD. In the official minutes of that
meeting it says only that the applicant stated that the
developers have met extensively with Humble ISD about
their proposed plan. Staff has determined that we haven't
found any connection between the MUD meeting and the
eligibility rule.

In addition, the HOA has raised a concern
because the applicant did not contact the HOA or the
developer of Fall Creek. They were not required to do so
by rule, as we discussed earlier about the neighborhood
association.

There is an allegation that the application
contains information about access to public transportation
and pedestrian access. In looking at the map, there are a
number of amenities within a mile and a half, so probably
walkable. And also the application does not state that
there will be public transportation services at the
development, only that they will be accessible, and they
are accessible fairly close by.

Additionally, the homeowners association is
concerned because the development is in a flood plain. We
are aware of this, the applicant is aware of this. The
site plan that we've received does address flood plain
mitigation issues as required by our rule.

MR. OXER: Most of Houston is in a flood plain.

MS. HOLLOWAY: Right.

MR. OXER: For the record, the Brazos River got
within three-quarters of a mile of my front door here a
couple of weeks ago.

MS. HOLLOWAY: And there's one more, there is a
contract amendment to the purchase agreement that was
received later on in the process that increased the
purchase price of the property. This is one of those items that will be dealt with by REA later on in the underwriting review. We are not finding any new information in this request from the homeowners association that leads us to believe that there was a rule violation or anything that staff would address, and we are considering this matter resolved at this time, but it sounds like we're going to be talking about it again.

MR. OXER: I suspect we will. Actually, this is a report item, and our request today would be only to generate some more information, and I think we need to further explore this, if only as a courtesy to Representative Dutton.

It's not an action item. Would it be an action item on the next agenda?

MR. IRVINE: It will be.

MR. OXER: We might have that as an action item on the next agenda to further quantify and clarify on the record what the Board intent is and the position on it, but I think we need to have some more exploration of it. Given that that's the case, we have some more comments? I know you want to speak again, Donna. You've had a shot. Let's go right here.

These are a little tense times, so everybody I hope will recognize and let's keep it a little bit lighter
than we have been.

MR. RANKIN: I don't think it's going to be lighter.

First of all, my name is Guy Rankin, and I used to be the executive director of the Harris County Housing Authority, so I know this area very well, and I had a project pretty much across the street from it called Sierra Meadows, so I know this area.

Another state rep, State Representative Garnet Coleman, asked me to speak on this issue. He will be putting a letter in to you, and it concerns a couple of things. One is the material deficiency letter, the banking letter talked about earlier, and that banking letter, if you look at Region VI, all of the projects in Region VI this year have that banking letter, except for this one. When we first started talking about material deficiencies, and if you want to add letters or look at letters, all of the other projects had the banking letter, this one did not have one. So that question is going to come up from Representative Coleman in his letter to all the Board members.

The second thing I'd like to say about this project, as recently as two years ago the Board determined because of an applicant not having a letter appropriately, that project was not funded. It was Palm Park, it's also
in Houston. So the same similar came up two years ago and that project did not receive the credits. In fact, the staff recommended opposite, they recommended they not get the credits from the Board. So that's another project that's going to be addressed in Representative Coleman's letter.

And the third thing, the critical thing about no paying the fees on time during the application period, all of the applications in Region IV paid their fees on time except this one, and this one paid something and then paid something later. That is going to be in Representative Coleman's letter, so the question is going to be is there a material difference in this application and why has this one been treated differently than the other ones.

Again, my name is Guy Rankin, and Representative Coleman asked me to look into this and he'll be getting a letter to the Board before the next meeting. Thank you.

MR. OXER: Thank you, Mr. Rankin.

Are there any questions from the Board?

MR. GOODWIN: I've got a question.

MR. OXER: J.B.

MR. GOODWIN: I thought I understood that we did have the banking letter, it just didn't have the
right --

MR. OXER: It was lacking a sentence.

MR. GOODWIN: It was lacking a sentence. I heard you say there was no banking letter.

MS. HOLLOWAY: There was in fact a lender letter; it did not include this operative language. In some instances lenders will provide a separate letter that includes this language, but it also can be included in the terms letter from the lender. There's no requirement that it be a separate document.

MR. RANKIN: I think all of the other developers would have that separate banking letter. If you look at the packages, they have a letter with the bank's name on it. This one does not.

MR. OXER: Hold on a second. You'll get your shot, don't worry.

Sixty seconds.

MR. RICKENBACKER: Obviously this isn't really the time to be providing this level of testimony. We've asked for it to come back to you all as an action item.

MR. OXER: For the record, we'll decide that.

MS. RICKENBACKER: But that was our request is what I'm saying. Obviously that is very much your decision, Chairman Oxer.

With respect to this letter, whether it's
separate or included within the context of the lenders
term sheet that all lenders provide with the applications
is really not the issue. It's whether or not the
appropriate language was there to support the points, and
it wasn't, at application it wasn't. They were allowed to
provide that necessary information through an
administrative deficiency process which is in violation of
the rules.

So I just think that the Board needs to take a
closer look at this scoring category. It is an 18-point
scoring category, it is the highest point category that
we've got, and yes, everybody else within Region VI did
provide the language to support those points. I
respectfully request that it come back to you.

Thank you, sir.

MR. OXER: Okay. Thanks for your comments.

MR. LIKOVER: There is a lot of twisting of
language.

MR. OXER: Hold on. Tell them who are you are
first.

MR. LIKOVER: Clayton Likover, representative
of the applicant.

There absolutely was a letter, it has BBVA
Compass's letterhead on it, you can see it clear as day.
To suggest that that there was not the letter, there was
one sentence missing from the letter which staff asked us
to correct and we did. People are trying to find
technicalities to kill it and twist language, totally not
true.

DR. MUÑOZ: Let me make a point about at least
your comment. Other situations, other projects have been
adversely affected because of the omission or absence of a
sentence or a word or a submission after a deadline. I'm
just making the point. I'm not necessarily inviting a
comment.

MR. OXER: Your point is made, Clayton.

Anything else? J.B., are you good?

MR. GOODWIN: I'm fine.

MR. OXER: Okay. Anybody else?

(No response.)

MR. OXER: Okay, Marni. Is there anybody else
who wishes to speak on this particular item?

(No response.)

MR. OXER: All of you who are not speaking on
that application, abandon the bench.

By my count, this is the last one.

MR. OXER: Yes.

MS. HOLLOWAY: Application 16380, Sierra Vista.

The requester questioned whether the application
identified the correct place for the location of the
proposed development site, as required to score two points under 11.9(c)(6)(C) underserved area. The application identified Lopezville census designated place as the place of the development. The requester provided information indicating that a portion for the CDP, the census designated place, containing the development site was annexed by the City of Edinburg in 2013. When staff initially reviewed the request, an administrative deficiency was issued, and on receipt of the applicant's response, staff issued a scoring notice taking away the two points for underserved area.

The applicant appealed the loss of points to the Department's executive director. The appeal was granted based on plain language reading of our rule at 10.2(d) under census data which says: "Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2015, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded." The most current data available as of October 15, 2015 was the census mapping that indicates that the development site is in the Lopezville CDP, annexation by the City of Edinburg does not appear in that mapping.
MR. OXER: Does it appear later?

MS. HOLLOWAY: It will appear with the next decennial census.

MR. OXER: Okay.

MS. HOLLOWAY: From the Census Bureau's website, their description of census designated places says CDP boundaries may change from one decennial census to the next one with changes in the settlement pattern, so it's something that they decide every ten years. Our rule says use the most current available data. That's how we arrived at the decision that the appeal would be granted and the application would retain those two points.

MR. OXER: Okay. So there's the city and there's the CDP, and the city overlaps that now.

MS. HOLLOWAY: Now.

MR. OXER: Not before.

MS. HOLLOWAY: Not before.

MR. OXER: So the data from the decennial census showed that it did not overlap.

MS. HOLLOWAY: Correct.

MR. OXER: And now it does overlap.

MS. HOLLOWAY: Correct.

MR. OXER: Which would mean that it would take that out.

MS. HOLLOWAY: Yes.
MR. OXER: But we're saying since the last census said it was okay and that's the data set you've instructed everybody to use, even though it's potentially nine or ten years old at some point in its life.

MS. HOLLOWAY: Right. And as I said, the census data item in the QAP says the availability of more current data shall generally be disregarded.

MR. OXER: Okay. Seems pretty clear.

Okay. Barry, good morning.

MR. PALMER: Good morning. Barry Palmer with Coats Rose, speaking on behalf of the two applicants who have challenged the award of these points.

These two points are awarded for being in a census designated place that has never received a tax credit allocation. This site was in the Lopezville CDP until 2013 when it was annexed into Edinburg. Edinburg has received 14 tax credit allocations, including a couple right down the street from this project. The rules for the TDHCA define place for purposes of this point item as a place as defined by the Census Bureau, and the Census Bureau's definition of a CDP is that they're the statistical counterparts of incorporated places but are not legally incorporated and may not extend into an incorporated area. So by the definition of the Census Bureau, you cannot be in both a CDP and an incorporated
So we contacted the Census Bureau --

MR. ECCLES: Mr. Palmer, if I could just ask since you're reading from something, could you identify?

MR. PALMER: Yes. This is from the letter that I provided that's in the Board's packet, dated June 23, that lays out some additional information that we provided that was received after the executive director had made his ruling on the appeal. And so that's why we're asking that you designate this as an item for further development by staff to come back as an action item at the next Board meeting.

And one of the things that we obtained that's in my letter is we contacted the Census Bureau and asked them if you could be both in a CDP and in an incorporated area, and they replied that no, a single tract can only be one or the other, a CDP or a place, and it cannot be both at the same time.

So we think that this is additional information that the Department should take into account that the Census Bureau is saying you can't be in both a place and in an incorporated area. So if you're in Edinburg, you're no longer in a CDP and not entitled to the points.

MR. OXER: And that sounds like a perfectly valid point, and the question then is: Is that based on
current data or the data under the census that we're
obliged to consider?

MR. PALMER: That's the most current
information that you have is what the Census Bureau is
saying now. We don't agree that the rule says you have to
wait ten years before updating your information, and that
hasn't been the practice in the past. In fact, there's an
appeal just like this that came to the Board in 2007 in
the City of Alton. It was substantially the identical
facts, and that's also in my letter dated June 23, where
an applicant was applying as Casa Alton and they were
using the housing needs score for that area, but in fact,
they had been annexed since the previous census, and so
the Board did not grant the full points based on the fact
that they would have been entitled to them under the
previous census.

MR. OXER: But we're not into the current
information at the point of application.

MR. PALMER: Right.

MR. OXER: Okay. So it gets down to, it sounds
like the crux of this one is how do we around the point
where recent information is not considered relevant.

MR. PALMER: Right. Well, we don't think that
that recent information is not considered relevant applies
to the situation where it says that there is a rule of the
Census Bureau that defines what a census designated place is, and that rule says that you can't be in a census designated place and be in an incorporated area.

     MR. OXER: That's not at issue, that's not the question, as best I can tell. But your point is made, Barry, we understand what you're saying.

     MR. ECCLES: And actually, this is what I was getting at when you were reading, you've said that the Census Department has defined something and has a rule on something, could you give us a citation on that?

     MR. OXER: And if you don't have it now, at least get us the citation, because we'll bring this item back.

     MR. PALMER: Right. We can get that for you; I don't have the citation here.

     MR. OXER: Certainly, please.

     MR. PALMER: And I'm not sure that staff had had the opportunity to look at this previous decision on the Alton case in 20007 to look at the precedent as to how that affects this situation. So we would ask that this be something that's further developed by staff, that we look at the precedent on this issue and bring it back as an action item at the next meeting.

     MR. OXER: Okay. All right. Points made.

     Donna, how nice to see you.
MS. RICKENBACKER: I know, it's me again.

Donna Rickenbacker with Marquis. We were one of the challengers, if you will, with respect to this particular application.

MR. OXER: Is this consistent with what Barry was just saying, is your point?

MS. RICKENBACKER: Well, kind of adding to it, yes, sir. This really gets to how the rules define a place for purposes of providing underserved area points, and how that is defined in our rules. Additionally, with respect to census data and the general requirements for the Department's use of census data for purposes of evaluating applications, those data sources that they use for determining population, for determining income, things of that nature, I don't think that the intent of that provision was meant to determine geographic areas.

And it also does specifically say within that general requirement that it states unless defined otherwise in the rules. And obviously our rules are defining a place for purposes of underserved area points based on its definition by the Census Bureau, so I want you all to keep that in mind.

Also, I want you all to -- I'm somewhat piggybacking off of what Barry said in that all the tax credits have been going into this area, if you will, of
Edinburg. Our application is in Weslaco who has not seen a tax credit application in many, many years, a successful tax credit housing development in many, many years. So I'm hopeful that you all will keep that in mind in your decision-making. We personally feel like the rules are pretty clear on this.

Also, I believe Representative Martinez did provide a letter that I think he was hopeful would be included in the Board book. I didn't see it, so if at all possible, I'm hopeful that can be read into the record.

Thank you so much.

MR. FLORES: Mr. Chairman, members, my name is Henry Flores and I represent the applicant.

Marni made a comment early on that I completely agree with, that this is actually a very simple matter, and some of the comments that are being made add a level of complexity that aren't really relevant. The rule is very clear and the rule is applied very specifically and correctly, and Ms. Bast, who represents this transaction as well, will speak to that.

But the correspondence that was provided to the Board brought into question issues that were raised by the geographer in the regional Census Bureau office. We too called the regional Census Bureau in Denver. We were told that the definitive source of information for census
designated places is actually the National Office of Demographics in Silver Springs, Maryland. We called and spoke to the demographer there who clarified some of the things that were being discussed today and actually indicates exactly the opposite of what the geographer was saying at the regional office. The phone number for that person was shared with Mr. Irvine, who I believe shared it with staff.

Some of the assertions that were made by the geographer were that CDPs are revised annually -- that's a comment that was made just now -- based on annexations. That's not correct. Changes based on annexations, because it does change the status of a location occur on a decennial basis. So even though it doesn't meet the definition today, the actual change in that status does not occur the next decennial period, maybe ten years. Now, the Census Bureau does change the list of CDPs on an annual basis, but that is based on a change in the gross statistical characteristics of that census tracts. A CDP is a conglomeration of census tracts that have similar characteristics. If a census tract in that CDP changes dramatically, then it's removed from the CDP.

A list is prepared once a year and included on the Census Bureau website when those kind of changes have occurred. We've reviewed the list, we've submitted the
list to the agency. From 2010 to 2015, Lopezville is not on that list. There have been no changes in the gross statistical characteristics of that census tract. It will change at the decennial. That area will be removed from the CDP, but as of the date that is shown in the QAP, it was part of the CDP.

The regional person, this geographer, also indicated that the boundaries are a CDP are just immediately after the receipt of the annual boundary annexation survey by the city. I have confirmed with the city manager at that point, Ramiro Garza, that a boundary annexation survey is submitted every year, as they're supposed to, to the Census Bureau, and that the report submitted in 2013 did include the annexation at this site. The maps have not changed in 2013, 2014 or 2015, and they're still not changed as of today. So the fact that it's been annexed has not affected whether we're in a CDP or not; it will in the decennial.

The third thing that the geographer said is that cities and CDPs cannot coexist, that they cannot overlap. Ms. Bast found a number of communities, and shared them with staff, in Covedale, Ohio, North Amherst, Massachusetts, and Lopezville and Edinburg where they do in fact coexist. So the comment was not accurate and the demographer verified that.
I think staff is correct in their analysis and that the points should be maintained. Thank you.

MR. OXER: Appreciate your comments, Mr. Flores.

MR. FLORES: Yes, sir.

MR. OXER: Cynthia, let's get yours in here. I think you can tell this is headed down the road to get a little bit more exploration on this one for an action item on the next agenda, so if you can get it quick, that will help.

MS. BAST: Cynthia Bast of Locke Lord, representing the applicant.

Respectfully, we believe that the executive director has decided this appeal in accordance with standard process and that no further inquiry is necessary because the rule does say, as you heard, that a place is an area defined as such by the United States Census Bureau. And TDHCA has a long history of relying upon the official records of other agencies as to what is or what isn't, and the official record of the Census Bureau shows that this is in a CDP.

In fact, in Mr. Palmer's letter there's a quote from Mr. Castanieri at the Census Bureau in the Denver regional office where he says that very latest official record of boundaries and CDPs can be used viewing their...
TIGER mapping tool. That's consistent with our rule in 10.2(d) that says when we're looking at boundaries as it relates to rural and urban areas for boundary purposes we're looking at the TIGER mapping tool. So our rules require us to rely upon what the Census Bureau is telling us, that this is in a CDP, and that is what they publish, and we are relying on their official records for that purpose.

This may be one of those quirks, Mr. Oxer, that you want to work out next year, and I understand that with the timing of a ten-year period here, but for a rule that says we look to the Census Bureau's records as of a certain time with certain parameters, I believe that the executive director properly granted the appeal, and I thank you for your time.

MR. OXER: Good. Appreciate that.

MR. MUSEMECHE: Can I follow up on a few things?

MR. OXER: Sure.

MR. MUSEMECHE: Mark Musemeche. We're one of the other applicants that are affected by this policy issue. And all I want to point out is I appreciate you listening to this, and we just want you to come back next Board meeting and listen to more information about this as an item. But what's not being said again is this

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Department has had a history of always determining certainty as of March 1, it's what's in effect March 1, and so I don't agree with the comments that we're relying on some outdated map. My conversations with that geographer were different, and he clearly says just because the map shows something doesn't mean it's so, it's what in effect March 1.

So I disagree with those comments and ask you all to please come back and listen to this in more detail and revisit other cases and other situations that appealed before where it's always been determined with certainty it's what's in effect March 1.

Thanks.

MR. OXER: Okay. Appreciate your comments.

MR. FLORES: May respond to that very quickly? One sentence really.

MR. OXER: It's never one sentence, but come say it.

MR. FLORES: I just want to point out that on March 1 -- I'm sorry. This is Henry Flores at the podium.

MR. OXER: Thank you.

MR. FLORES: On March 1, the date referenced, the maps that are in place on the TIGER website show it in the CDP. So whether it's March 1 or not, made a comment about Mando Martinez, the state rep, our state rep, our
state senator and the mayor all confirmed independently that we are in fact in the CDP.

MR. OXER: Good. Thanks.

MR. FLORES: Thank you, sir.

MR. OXER: Those among us up here were counting your sentences. It wasn't me. Okay?

(General laughter.)

MR. OXER: All right. Marni, have you got anything to add in summary?

That's right, you've got two letters you want to read on this particular item. Right?

MR. LYTTLE: Right.

MR. OXER: Let's do it.

MR. LYTTLE: The first letter on this comes from State Senator Eddie Lucio, Jr.

"Dear Chairman Oxer and Members of the Board:

Out of great respect for the Board's diligent efforts to meet the intent of governing state and federal statutes and to further the goals of guiding rules, I write you concerning a matter brought to my attention regarding the state's Housing Tax Credit Program.

I am informed of a challenging and unique situation currently being addressed by TDHCA staff pertaining to the possible awarding of the "underserved area" incentive points to a "project location" that is
within the boundaries of a municipality. Constituents have voiced concerns that awarding these incentive points in this manner may potentially put into question the utility of these points. Concerned stakeholders have asked that this matter be addressed through an agenda action item at your upcoming July hearing.

"Because the awarding of the "underserved area" points to any "project location" that may be within the jurisdiction of a municipality that has seen prior Housing Tax Credit awards is outside the norm. Arguably, this matter could merit review by the Board during your next public meeting. Affording all sides a forum to publicly plead their case allows the Board an opportunity to act as a deliberative body to ensure that the intent and goals of the HTC statutory framework are met.

"In closing, our state and federal governments are served well by boards and commissions like yours which carry out the statutory intent of the laws enacted. As stewards of our HTC Program, you have the necessary discretion to ensure compliance with the intent and goals of governing statutes. This discretion serves the Board well as you address this unique occurrence.

"I thank you in advance for working to find an amicable resolution to this most challenging situation.

"Sincerely, Eddie Lucio, Jr., State Senator,
The next letter is going to be from State Representative Armando Martinez. It reads:

"DWR Development Group applied for 2016 nine percent housing tax credits and submitted TDHCA application 16104 Villa Verde Estates, in connection with the development of affordable rental housing at a site near the northeast corner West Mile 5 North Road and South Border Avenue in the ETJ of Weslaco in Hidalgo County. The Villa Verde Estates site is in my district. I gave this application my full support, as did the Hidalgo County Commissioners Court and the Weslaco City Council.

"I have been contacted by representatives of DWR Development Group, the mayor of Weslaco, and other individuals regarding application 16380 Sierra Vista, a competing application that is proposing to develop a site in Edinburg, Texas. I have been told TDHCA received two separate letters from competing applicants including one from an affiliate of the DWR Development Group challenging points claimed by the Sierra Vista applicant under the underserved area category. Based on the challenges, this scoring category allows an applicant to qualify for two points if their site is located in a place that has never received tax credits, and your rules define place as an area defined as such by the United States Census Bureau."
that includes unincorporated areas known as census designated places.

"The Sierra Vista applicant claimed that their site is located in Lopezville, a census designated place and therefore should qualify for the two points claimed. DWR provided TDHCA evidence to the contrary, including a copy of the city ordinance showing that the Sierra Vista site was annexed into the City of Edinburg in December of 2013. I'm told DWR also provided to TDHCA a copy of the definition of a place from the Census Bureau's website that defines a CDP as a statistical counterpart of an incorporated place, i.e., the City of Edinburg, which definition further states that a CDP may not extend into an incorporated place. Therefore, based on the Census Bureau's definition of a CDP, one can conclude that once the Sierra Vista site was annexed into the City of Edinburg, an incorporated place, it no longer extended into or remained a part of the unincorporated area of Lopezville.

"I bring this matter to your attention because it appears TDHCA's staff agreed with the challenges, deeming the Sierra Vista site to be in the City of Edinburg and deducted the underserved points from their final score, then as late as June 16, posted a reversal of their position, gave the points back to this applicant and
restored their application. I am being told that TDHCA staff made no effort to communicate with the challengers, explain the basis for the change and explain why their position in the final stages of the 2016 application cycle. Their actions have effectively eliminated the Villa Verde Estates development from receiving an award of tax credits, a housing community that would be located in my district and serve my constituents.

"I believe that DWR provided to TDHCA a compelling set of arguments for denying the underserved area points to the Sierra Vista applicant, all of which should be vetted and given full consideration by the Board. I also point out that the challenge included transcripts from several appeals to the Board whereby the Board had consistently upheld scoring determinations based on evaluating applications using the current location of the development site as of March 1, 2016. The Sierra Vista site is in the City of Edinburg and was as of March 1, 2016. TDHCA staff appears to be disregarding previous Board conclusions on similar matters and in the process making decisions that are contrary to the Board's prior rulings. Any reinterpretation of prior rulings should be left to the Board based on its full consideration of the arguments and the merits of the claims made by all parties."
"I strive to do the best job for my constituents and I'm a proud supporter of high quality affordable housing which is desperately needed in the Weslaco area. My district, District 39, has not been the recipient of tax credit funded housing in many years. I respect my colleagues and their efforts to support housing initiatives in their districts, but I believe that if TDHCA applies the rules in a consistent and transparent manner, then the disbursement of the state's housing dollars will be more equitably distributed across more areas of the Valley.

"I respectfully request that the merits of the challenges and the issues raised in this letter regarding the definition of a place be placed on the agenda for the Board's full consideration at your next meeting in July.

"Sincerely, Armando "Mando" Martinez, State Representative, District 39."

MR. OXER: Okay. Any other comment on that item?

(No response.)

MR. OXER: I think on the last item just run through that one right quick because Toni said she was going to bring it up at the next meeting.

MS. HOLLOWAY: Oh, 16387?

MR. OXER: 387, right. Just blast that one so
we can be completed.

Is there any other public comment on this?

(No response.)

MR. OXER: Okay. Thanks, folks.

MS. HOLLOWAY: 16387 Cantabria Estates

Apartments. The requester questioned whether the application is eligible to compete in the at risk set-aside as it does not meet requirements of 11.5(3)(C)(ii), specifically that the development is proposing relocation of existing units in an otherwise qualifying at risk development. They can only do that if they propose the same number of restricted units.

This was originally submitted as RAD deal in partnership with the housing authority and proposed to reconstruct 34 units and add 58 restricted units and ten unrestricted units. The housing authority has a plan in the future to demolish 74 units so they're splitting them up. Because they added the additional restricted units, staff issued an administrative deficiency saying how do you still fit in the at risk set-aside. The applicant sent in their response a reduction -- not a reduction. No, they can't request a reduction because that's too large for the administrative deficiency process by definition in the administrative deficiency process, and because they don't meet the requirements to participate in

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the at risk set-aside any longer because of this change in unit numbers, we have issued a scoring notice taking six points for pre-application. That is the appeal that we received yesterday, the appeal of the scoring notice.

MR. OXER: So it will wind up being on the agenda for the next meeting.

MS. HOLLOWAY: Yes, I would imagine.

MR. OXER: The appeal is under way and in process.

MS. HOLLOWAY: Right.

MR. OXER: Are there any questions from the Board on any of the items?

(No response.)

MR. OXER: From what I heard there were four items: 16057, 16117, 118 and 380. I was satisfied that the data was sufficient that the staff evaluated on 117. 118, I think obviously, I'd like to have some more background and more exploration on that one, and certainly on 380. So those are my two requests. Any member of the Board may request further exploration of the other two if you'd care for it. We are not obliged to take any action on this except to request from staff further exploration and detail on those items that we define here. Those are the two that I would like to have some more information on. If any member of the Board would like to have other
information, now is the time to say it.

DR. MUÑOZ: Which were the two again?

MR. OXER: 118 and 380.

MS. HOLLOWAY: The Standard on the Creek, so that's Representative Dutton and the homeowners association, that one, and then Sierra Vista, which is the census designated place question.

MR. OXER: It all depends on what the definition of it is.

MS. HOLLOWAY: Something like that.

MR. OXER: With respect to 057 and 117, your assessment was?

MS. HOLLOWAY: Staff is considering those matters closed.

MR. OXER: Just to be clear. Okay. Let's hear some more on 118 and 380 for next time.

MS. HOLLOWAY: Okay.

MR. IRVINE: We'll bring them as an action item.

MR. OXER: So those will come up for a formal up or down decision by the Board two weeks from today, I guess.

MS. HOLLOWAY: Yes.

MR. OXER: Having so much fun this time of year, we come back more often. Right?
DR. MUÑOZ: Marni, for me the 380 may be a little less complicated once you begin to grind down some kind of definitional specificity. But the other one, you know, the representation of facts by one group versus the other versus emails, that one you're going to have to get into a little bit more carefully to see if it rises to sort of the level of whatever statute or law is being invoked.

MR. OXER: Facts are going to be friendly.

MS. HOLLOWAY: That's the difficulty we've had is getting to that.

DR. MUÑOZ: Is it omission, is it misrepresentation, is it this, was the association notified, did they have to be at the time of.

MS. HOLLOWAY: It's very thorny issues that we have not been able to come to a conclusion on.

DR. MUÑOZ: I'm just telling you like here, me personally -- I can't speak for everyone -- intuitively you think you could kind of get to some clarity, but I read and I sense the difficulty.

MR. OXER: It this was easy, you'd have already taken care of it. Right?

MS. HOLLOWAY: That's right.

MR. OXER: Mr. E-D, do you have a further comment? Silence is a comment in itself. That's okay.
MR. IRVINE: It's a hard thing to articulate. I mean, when you've got assertions that go to material misstatements or material omissions, it's not necessarily the same thing to say that we agree with this or we disagree with that, it's really what does the developed record actually substantiate.

MR. OXER: Right. What were the facts. That's why I say facts are friendly. Like what was said and what was right.

DR. MUÑOZ: And to the E-D's sort of comment, this is what I was trying to amplify in my final remark. I don't know what the consequence of this sort of sentence not being present at the time of, but I know that we have rules for what's required at a specific point in time and we've taken action because it wasn't there or it wasn't submitted at this time, even a minute late, whatever. And so as the chairman always reminds us, we have rules for a reason, we have sharp edges. Again, I don't know what the final outcome will be, but the comment of sort of minimizing or dismissing the absence of a statement may be inconsequential and in some instances it's not. Our interpretation is, as the executive director said, what's there in the record at a specific point in time.

MR. IRVINE: I also think it's important to understand that the administrative deficiency process is
that one little area where that hard edge may have a little bit of latitude, and it's where the applicant provided something that was responsive to the matter in question but we needed some small clarification or whatever to address the exact complete requirements. We could obtain that in a very prompt process that's fully resolved within five days that does not require that we start over reevaluating the application or whatever. You know, I think that as we sharpen the rules in the future, we may want to look at whether that administrative deficiency process is working as intended.

MR. OXER: But the record, for this set of rules it is working as it is working, so we'll deal with that.

Anything else on this item, Marni?

MS. HOLLOWAY: No, not from me.

MR. OXER: Good. Thanks for your perseverance and endurance.

Sharon, let's get the last one.

MS. GAMBLE: Sharon Gamble, administrator for the Housing Tax Credit Program.

The last item that we have for today is the list, the list. We have the presentation, discussion and possible action to issue a list of approved applications for 2016 Housing Tax Credits, and this is brought to you
in accordance with Section 2306.6724(e) of the Texas Government Code, according to which this Board is required to review the recommendations of Department staff regarding applications and shall issue a list of approved applications each year in accordance with the QAP not later than June 30, so here we are. Moreover, the Board shall issue final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than July 31, which we will get to.

MR. OXER: We've got a lot more thrashing around before we get to that.

MS. GAMBLE: Don't we. You said it.

We received 141 applications. Of those, seven have been either withdrawn or terminated, and those applications do not appear on the list that's in the Board book. There are still some applications that are undergoing some staff action, and those are indicated on the list as pending appeal, and those will probably be heard next Board meeting if they make it that far. There are also notations on the list of applications that as they stand in the scoring would violate the $3 million awarded.

MR. OXER: Composite cap.

MS. GAMBLE: Yes. And so those are marked as
ineligible at this time. They're not terminated or withdrawn, they're just ineligible at this time.

So on this list the applications are approved in the sense that they've not yet been identified as having any material deficiencies or other defect that would cause them to be ineligible, or if such matters have been identified, they're still within the period where such matters may be appealed.

MR. OXER: They're still in the race so far.

MS. GAMBLE: They're still in the race.

Not all applications on the list will be reviewed as the Department only reviews priority applications that are most likely to be competitive. The attached list includes the current score for each active application, as well as relevant application information. The ones that have received a final scoring notice are identified in the review status column with a C. The applications that are currently under review have a UR, which I don't think any of them do. And if an application is pending appeal, the list indicates that. Those with an N have not been prioritized for review.

At this time applications remain subject to underwriting, completion of any remaining program review, and a previous participation review. Further, the credit amount reflected on the list is the requested credit

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amount and may change to reflect the recommended credit
amount and/or may have conditions placed on the allocation
in July. And I might add to that that the credit amounts
indicated do not include anything from the returned
credits and so those amounts might change as well.

In addition to applications that may be removed
from the list for issues of financial feasibility,
applications may also be removed from the list of approved
applications as determinations are made on appeals or as
the Board determines under operation of rule or law.

So with that, I present to you the list, and
I'll answer any questions about it if you have any.

MS. BINGHAM ESCAREÑO: Mr. Chair, it's probably
not material but in our digital copy there's a spreadsheet
error. For where Region VI Rural should be, there's an
error there.

MS. GAMBLE: I will fix that, I promise.

MR. OXER: The official document which is going
to be on the website and basically tells everybody where
we're at on June 30. Right?

MS. GAMBLE: Absolutely.

MR. OXER: You'll have that corrected this
afternoon. Right?

MS. GAMBLE: That's correct. Actually, it's
already corrected, it just didn't get corrected before the
Board got it.

MR. OXER: Mike's in the process of correcting his record over there.

MS. GAMBLE: Well, you know, that's a long process.

(General laughter.)

MS. BINGHAM ESCAREÑO: No other questions.

MR. OXER: Okay. Any other questions from the Board?

(No response.)

MR. OXER: I think we are in the process to resolve to approve this list of applications in accordance with the 2306 and the QAP.

MR. LYTTLE: Chairman, I'm sorry. I have one letter to attempt to read into the record.

MR. OXER: On this item?

MR. LYTTLE: On this item.


MR. LYTTLE: Hopefully my temporary dyslexia will be gone.

MR. OXER: Technically we have to have a Board motion to do that.

MR. LYTTLE: Oh, should I wait then?

MS. BINGHAM ESCAREÑO: I'll move.
MR. OXER: Okay. Motion by Ms. Bingham to approve staff recommendation.

MR. GOODWIN: Second.

MR. OXER: And second by Mr. Goodwin to approve staff recommendation on this item 4(h).

Now, Michael

MR. LYTTLE: It is from State Representative Abel Herrero. He is State House District 34. He said:

"I write today in regard to the Housing Tax Credit application for the Calallen Apartments project in Corpus Christi, application number 16343.

"While I previously lent my support to the project, recent concerns that have been brought to my attention have caused me to withdraw my support. Numerous constituents have expressed concerns ranging from poor drainage and flooding to increased traffic congestion. My strongest concern now is the strain on the neighborhood infrastructure which could affect public health and safety throughout the area. I am committed to supporting tax credit projects that are well thought out and well planned, however, after hearing from constituents, I cannot continue to support this development.

"I hope that the neighborhood residents' concern will be weighed heavily in this case and that all of these concerns will be thoroughly considered before the
tax credit award is decided.

"Sincerely, Abel Herrero, State Representative, District 34."

MR. OXER: Okay. There's no other request for public comment regarding item 4(h) on the agenda. Motion by Ms. Bingham, second by Mr. Goodwin to approve staff recommendation regarding the list for this year's competitive Housing Tax Credit round. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

Okay. We have reached the point in the agenda where we accept public comment on matters other than for those items for which there were posted agenda items. This is for the purpose of building the agenda as we go forward in the next and future meetings. Is there anybody in the audience who wishes to speak?

MS. RICKENBACKER: There was some comments made earlier about potential for application fees. Donna Rickenbacker with Marquis. I apologize. There's the potential for failure to pay the appropriate amount of application fees were brought into testimony today and that potentially it impacts more than just one application. I respectfully request that staff bring to
the Board a list, if there is a list, of what applications are potentially impacted by those statements. That's my request, please.

MR. OXER: Okay. Thanks, Donna. Appreciate your comments.

Anything else anybody would like to speak to or address? Any of the staff? Always welcome the staff. You get enough time in the box where we're shooting at you, you get to shoot back. Okay? Nothing else?

Any member of the staff on the dais here? Member of the Board?

(No response.)

MR. OXER: All right. Being the chairman, I get the last comments here. I really appreciate the work that goes into all of this. This is a tough business and it seems like it's tougher this time of year. But it's a very good process that we do and we try to adhere to our rules. I appreciate very much all the effort that everybody in this room puts in, but particularly thanks to everybody back at 221 East 11th Street for all the work that they put in because that's what makes us look good and makes this process go as it does.

We remain for the next couple of meetings, since we have two meetings in July and then one in late August, we'll remain on summer casual which I think has
been comfortable for everybody.

So with that, I'll entertain a motion to adjourn.

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Motion by Mr. Goodwin to adjourn for the day, and second by Ms. Bingham. Those in favor?

(A chorus of ayes.)

MR. OXER: And those opposed?

(No response.)

MR. OXER: See you in two weeks, everybody.

(Whereupon, at 12:30 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: June 30, 2016

I do hereby certify that the foregoing pages, numbers 1 through 135, 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.

07/05/2016
(Transcriber) (Date)

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3636 Executive Cntr Dr., G22
Austin, Texas 78731