TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

January 18, 2018
8:00 a.m.

MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
INDEX

AGENDA ITEM PAGE
CALL TO ORDER 6
ROLL CALL
CERTIFICATION OF QUORUM
Resolution Recognizing February as Black History Month 7
CONSENT AGENDA
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS: 9

EXECUTIVE

a) Presentation, discussion, and possible action on Board meeting minutes summaries for October 12, 2017, and November 9, 2017

LEGAL DIVISION

b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning 814 S. Kentucky (HTC 70005 / CMTS 874)

c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning 1209 Keralum (HTC 70062 / CMTS 901)

d) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Las Villas de Merida (HTC 02009 / CMTS 3210)

MULTIFAMILY FINANCE

e) Presentation, discussion, and possible action on Determination Notices for Housing Tax Credits with another Issuer

   17421 The Brookwood San Antonio
   17444 Sabine Place Fort Worth

f) Presentation, discussion, and possible action on Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds
17445 Nightingale at Goodnight Ranch
Austin

g) Presentation, discussion, and possible action on Inducement Resolution
No. 18-013, McMullen Square Apartments, for Multifamily Housing Revenue Bonds
Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2018 Waiting List

h) Presentation, discussion, and possible action regarding a request for waiver of 10 TAC §0.101(b)(2), related to Development Size Limitations for Hutto Station in Hutto

ASSET MANAGEMENT

i) Presentation, discussion, and possible action regarding material amendments to Housing Tax Credit Applications

13044 Villas of Vanston Park Mesquite
14148 Greens at Brentford Mission Bend

SINGLE FAMILY OPERATIONS AND SERVICES

j) Presentation, discussion, and possible action on Colonia Self Help Center ("Colonia SHC") Program Award to Val Verde County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant ("CDBG") Funding

HOUSING RESOURCE CENTER

k) Presentation, discussion, and possible action on a draft substantial amendment of the 2015-2019 State of Texas Consolidated Plan

COMMUNITY AFFAIRS

l) Presentation, discussion, and possible action on awards for 2018 Community Services Block Grant Discretionary ("CSBG-D") Direct Client Assistance and Network Operational Investments

ON THE RECORD REPORTING
(512) 450-0342
HOME AND HOMELESSNESS PROGRAMS

m) Presentation, discussion, and possible action to authorize the issuance of the 2017 HOME Single Family Programs Homeowner Rehabilitation Assistance ("HRA") Notice of Funding Availability ("NOFA") and publication of the NOFA in the Texas Register

n) Presentation, discussion, and possible action to authorize the issuance of the 2017 HOME Single Family Programs Tenant-Based Rental Assistance ("TBRA") and Homebuyer Assistance ("HBA") Notice of Funding Availability ("NOFA") and publication of the NOFA in the Texas Register

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities, (December 2017 B January 2018)

b) Report on Department's Fair Housing Activities

c) Report on minor amendments to the 2014 and 2015 State of Texas Consolidated Plan: One Year Action Plans

d) Report on the 2019 QAP Planning Project

e) Report on the Department's Swap Portfolio and recent activities with respect thereto

ACTION ITEMS

ITEM 3: REPORTS

a) Quarterly Report on Texas Homeownership Division Activity

b) Report on change in reporting to the Internal Revenue Service ("IRS") regarding eligible basis

ITEM 4: MULTIFAMILY FINANCE

a) Presentation, discussion, and possible
action on a Request for Rural Designation under 10 TAC §10.204(5)(B) for the Cameron Park Colonia

b) Presentation, discussion, and possible action regarding site eligibility under 10 TAC §10.101(a)(2), related to Undesirable Site Features for Residences of Stillwater in Georgetown

c) Presentation, discussion, and possible action regarding an award of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability

17028 The Vineyard on Lancaster Fort Worth

d) Presentation, discussion, and possible action regarding the interpretation of provisions of the Qualified Allocation Plan relating to the claiming of disaster points; the timing of submittal of resolutions of local government support or opposition and state representative input letters; and the handling of these matters by staff if they create a change in self-score that would disqualify an applicant for pre-application points

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

EXECUTIVE SESSION

ADJOURN
MR. GOODWIN: I call to order the January 18 meeting of the Texas Department of Housing and Community Affairs, and we will start with Tim leading us in the pledge.

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

MR. GOODWIN: Please accept my apologies for the bronchial cedar fever kind of voice.

Michael, I think you have a resolution to read into the record.

Sorry. We need to take roll first.

Ms. Bingham is not here.

Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Mr. Goodwin, yes.

Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Present.

MR. GOODWIN: And Mr. Vasquez is not here. We have a quorum.

Michael.

MR. LYTTLE: Yes, sir. We have a resolution to read into the record. It reads as follows:
"Whereas, February 2018 is Black History Month, and has a nationally designated theme of "African Americans in Times of War," commemorating the centennial of the end of the First World War in 1918;

"Whereas, the Texas Department of Housing and Community Affairs (the "Department") recognizes the significance of Black History Month as an important time to acknowledge the struggles and to celebrate the contributions of African American soldiers and sailors, veterans, and civilians in Texas' history, American history, and world history;

"Whereas, the Department recognizes the roles of African Americans in times of war, from the Revolutionary War Era to that of the present "War against Terrorism," in making the world safe for democracy; and

"Whereas, the Department recognizes that the ethnic and racial diversity of Texas soldiers and veterans enriches and strengthens not only our nation=s military, but our nation as a community;

"Now, therefore, it is hereby resolved, that the Texas Department of Housing and Community Affairs C

"(1) recognizes the significance of Black History Month as an important time to acknowledge, better understand, and celebrate the history of African Americans, and encourages the continued celebration of
this month to provide an opportunity for all peoples of
the State of Texas to learn more about the roles of
African Americans in every American war, from the
Revolutionary War Era to that of the present "War against
Terrorism" and its effects on the past, present and future
of our Lone Star State, the United States, and the World;
and

"(2) recognizes the specific and unique issues
faced by African Americans in times of war, including the
impact of migration and urban development, and the
responsibility of providing equal housing opportunities
for all.

"The Governing Board of the Texas Department of
Housing and Community Affairs does hereby celebrate
February 2018 as Black History Month in Texas and
encourages all Texas individuals and organizations, public
and private, to join and work together in this
observance."

MR. GOODWIN: Do I hear a motion to adopt the
resolution?

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Moved and seconded. All those in
favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: It passes.

We have the consent agenda and consent agenda report items. Any Board members want to pull any of those items?

(No response.)

MR. GOODWIN: If not, I'll receive a motion for acceptance of the consent agenda and consent agenda report items.

MS. RESÉNDIZ: So moved.

MR. GOODWIN: So moved. A second?

MR. BRADEN: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Then we'll move into item 3, the action items. We will start with the quarterly report on Texas Homeownership Division. Cathy --not Cathy, Monica.

MS. GALUSKI: Good morning. Monica Galuski.

Cathy is unfortunately not here. She's attending to an
ill family member, so we wish her well and wish she were here, because I'm wholly unprepared to present this, but the good thing is, as you can see in your report, the charts speak for themselves. We are continuing to have extremely high activity in our homeownership programs for single families.

Our TBA program, which is our core lending program, we're currently averaging about $96 million a month. Just back a year and a half, two years ago, we were doing a total of $250 million a year, so that is significant.

Our MCC activity is still extremely high on the standalone front, and this is all sort of due to changes that we made to the structure of the program, bringing in the new master servicer, setting up a line of credit with Federal Home Loan Bank, getting the loan with Wood Forest, so we're able to offer a very attractive product.

One very noteworthy thing is we have maintained very strict income and purchase price limits. We are still maintaining our lending for true low to moderate income homebuyers, true first time homebuyers, and that's something that I think we can be really proud of. We're staying true to the mission.

Cathy's group is phenomenal. Their lender relationships, the way they've maintained and expanded
those relationships and their ongoing relationship just
continues to allow us to be successful in this area.

So sorry I'm not Cathy. We wish her and her
family well. Does anyone have any questions?

MR. GOODWIN: Any questions for this unprepared
witness?

(General laughter.)

MR. GOODWIN: Thank you. Do I hear a motion to
accept the report?

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Any other questions?

(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Moving on to 4(b). Patricia, I
think you're going to talk to us a little about the change
in reporting to the Internal Revenue regarding eligible
status -- eligible basis -- I'm sorry.

MS. MURPHY: Yes. Good morning. Patricia
Murphy, chief of Compliance.

The next item is a report to you and the wider
audience about compliance issues related to eligible basis and reporting of those matters to the Internal Revenue Service.

As you know, we monitor for compliance with the Housing Tax Credit Program, so when we go to monitor a property, if we identify noncompliance, we give the owner notice, give them a period of time to cure those issues or show they were continually in compliance. At the end of that period, if there truly was noncompliance, we report that to the Internal Revenue Service on Form 8823. The IRS has a guide for state housing finance agencies to use when monitoring for the Housing Tax Credit Program that we rely on.

Historically, if properties were charging for amenities, such as garages or storage or covered parking or things such as that, we checked to see if the owner had excess basis or had voluntarily removed those items from eligible basis when they submitted their cost certification. Staff attended a training class that instructed that charging for amenities that could potentially be included in the development's eligible basis is an issue that we're supposed to be reporting to the IRS on Form 8823. There may be no tax impact but the state housing finance agency does not have sufficient information to make that determination, only the IRS does.
After that class we contacted the IRS and requested guidance on the matter. The IRS program analyst indicated that, indeed, we were to report any time a development was charging for amenities that could be included in the property's eligible basis.

Upon posting of this Board report, it has come to my attention that this issue has been circulated broadly and perhaps there are some other points of view on this issue. So to be certain, again yesterday we contacted the IRS and we also shared the report item that's in your Board book. The IRS analyst that we spoke with in the fall has retired and this new IRS analyst would like some time to visit with the attorneys of the Treasury Department and provide additional guidance.

So at this time we're going to continue to handle the matter as we always have. If properties are charging for amenities, we will look to see if there is excess basis, enough to reasonably cover the cost of the amenity, and if so, we won't say anything.

We wanted to still present this item today and hear comment, if there is any, but to frame this issue, we need to do a little like Tax Credits 101, so I'm going to run through some examples that are pretty general in nature but illustrate the issue.

So eligible basis is the total depreciable cost
of developing a property. I think the easiest way to think of it is as the cost of construction. So if you take your eligible basis and you multiply it by the applicable fraction, which is the low income occupancy of the property, so if a property is supposed to be 100 percent low income or 80 percent low income, you take the eligible basis times applicable fraction equals qualified basis. If you multiply the qualified basis times the applicable credit percentage, the 9 percent or the 4 percent, that equals tax credits the owner is allowed to claim. So eligible basis, applicable fraction, credit percentage.

Owners use IRS Form 8609 to actually claim the credit. It's a two-part form and Part 1 is completed by the state housing finance agency, Part 2 is completed by the owner the first year they claim the credit. In general, when staff completes Part 1 of the 8609, they indicate the maximum amount of credits that an owner can claim which is limited by the amount that they were allocated when they were awarded. If a property has construction cost overruns -- which we hear a lot about, construction costs are rising -- so if they have construction cost overruns, they're eligible basis will be greater than the amount that was anticipated at the time of the award. This is like their excess basis.
Throughout the compliance period if the property experiences noncompliance, they can use that excess basis to kind of cover the decrease in the applicable fraction.

So let me give you just a simple example. Let's say at application a property expected to have an eligible basis of a million dollars, they said we're going to be 100 percent low income, and they were in 9 percent credit. So they would get $90,000 from our ceiling. Right? The 9 percent is a competitive process so we only have a certain amount that we can award, they would get $90,000 of that, and they can claim that every year for ten years.

So if they do their property and their construction and they have construction cost overrun, let's say they come in at $1.3 million and they're still doing 100 percent and 9 percent credit, they still only get $90,000 because that's all we set aside for them and that's what they get. This is different for 4 percent credit, but for the 9 percent credit, that's kind of how it works.

So when the owner completes Part 2 of the 8609, each building's eligible basis is reported to the IRS, it's reported on line 7. In the example that I've just given, the owner can list their eligible basis as $1.3 million because that's how much they spent in developing
the property. If there's noncompliance, and let's say the applicable fraction falls to 90 percent, there's no tax impact because $1.3 million times 90 percent times the 9 percent credit still comes to more than $90,000, so despite the noncompliance, they can claim all of the credit that was allocated to them.

However, if the property's eligible basis includes amenities, like parking, storage, garages, and they're charging tenants for those items, they're not to be included in the eligible basis, but there's no way for the IRS to know they're charging for those things if we don't report it. So if they were charging for amenities and experience noncompliance, then there is a possible tax consequence.

So we are awaiting guidance from the Internal Revenue Service, the gentleman we spoke with yesterday to get a clear understanding of the issue, because if there's no noncompliance and we report that they're charging for things in eligible basis, who cares. Right? So we're waiting for some guidance from the IRS on this matter on exactly what they would like us to report and when and under what circumstances, and we'll bring back to you an update at that time. But we wanted to go ahead and still present this today, and if there's any public comment on the matter, we'd like to know other people's perspectives
on this and even share that with the IRS.

Do you have any questions?

MR. GOODWIN: Thank you, Patricia. Any questions?

(No response.)

MR. GOODWIN: No questions. Any public comment? Cynthia, did you want to comment?

MS. BAST: Yes, thank you. Good morning. I'm Cynthia Bast of Locke Lord.

First of all, I want to say I truly appreciate Patricia bringing this out in this very open manner so that we could all know about this shift. I've been doing this for a long time and I have seen over the years that from time to time there is a shift in the way someone at the IRS or someone at HUD looks at a program, looks at a procedure, and wants to see something happen differently.

This particular issue, as Patricia indicated, has been in place for a long time, this procedure of not reporting charging for things when there's excess basis or they were excluded from basis, and a change would be a very big deal for the owners out there. To this date, the Department, I believe, has relied upon the accountants, the developer general partners, and the investors to self-police, that they're reporting to the IRS what is legitimately in their eligible basis and they're not
charging for things that would have been included in that eligible basis, and so this brings another element to it with the Form 8823.

There are partnership agreements out there between developers and investors that say if you have an 8823 that that potentially creates a fault with the investor. Investors have concerns about that too, it puts them on the IRS radar screen for potential review, audit, et cetera. So this really would be a very big change, and I just want to put that out there.

And so because of that, when I saw it, I consulted with my colleague lawyers here in Texas who represent clients before this agency, and we all agreed that I would reach out to the American Bar Association, which has a listserv for attorneys practicing in affordable housing. It's a very vibrant group that shares thoughts and ideas on a regular basis, and so I did reach out to that group and asked if anyone else was seeing this in their states, if they were seeing their allocating agencies getting this interpretation, taking this path, or even if any of them were talking to the IRS or hearing this from the IRS, and I got no responses that anyone in any other jurisdiction was aware of this kind of potential change in the way IRS was looking at things.

So I sincerely appreciate that the Department
is doing everything it can to try to get a good answer from the IRS because it will have very meaningful implications to everyone across the country, and I thank you for the time.

MR. GOODWIN: Okay. Any questions?

(No response.)

MS. LATSHA: Good morning.

MR. GOODWIN: Good morning.

MS. LATSHA: Jean Latsha with Pedcor Investments.

I just wanted to kind of echo what Cynthia was saying. This kind of came to my attention through Cynthia and that whole blast just a couple of days ago. We are a national development company and kind of looking into this too. Haven't had a chance to really research it as far as what other states are doing, but as an example, all of our 4 percent tax-exempt bond developments in Texas, we don't include in basis carports and garages and we do get income from renting out those carports and garages which is part of the entire financial structure of these developments. And so just to echo what Cynthia said, in that very just one specific example, it would be a huge change if suddenly we weren't able to charge for them or whatever it is that that implication would be.

And so just from an owner-developer-operator
perspective, just wanted to echo what Cynthia said, and also appreciate that staff is really looking into this to make sure it's handled the right way. Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Patricia, I had a question. Did I understand you to say that this only affected the 9 percent?

MS. MURPHY: No. The example I gave was a 9 percent credit.

MR. GOODWIN: But it would also have the same impact on the 4 percent?

MS. MURPHY: Correct.

MR. GOODWIN: Okay. I just wanted that clarification. Thank you.

MS. MURPHY: Thank you.

MR. GOODWIN: Any other comments?

(No response.)

MR. GOODWIN: Do I hear a motion to accept this report?

MS. THOMASON: So moved.

MR. GOODWIN: Moved. Second?

MR. BRADEN: Second.

MR. GOODWIN: Any discussion?

(No response.)
MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. We'll move on to 4(a).

Marni.

MS. HOLLOWAY: Good morning, Chairman Oxer -- Chairman Goodwin -- I'm sorry.

MR. GOODWIN: That's okay.

MS. HOLLOWAY: It's really early. I should have taken you up on that coffee.

MR. GOODWIN: I know I've had a big impact on you.

(General laughter.)

MS. HOLLOWAY: Chairman Goodwin, members of the Board, I'm Marni Holloway, the director of the Multifamily Finance Division.

Item 4(a) is presentation, discussion and possible action on a request for rural designation under 10 TAC 10.204(5)(B) for the Cameron Park Colonia. So under statute and rule, a political subdivision or a census designated place may request to be designated as rural if the area meets certain criteria. This designation would allow an application for 9 percent credits to compete in the rural subregion, which is
generally less competitive, and would allow for the longer
distance measurements used for rural opportunity index.

Cameron County has submitted a request that an
unincorporated colonia area surrounded by the City of
Brownsville be designated as rural. The area includes the
census designated place Cameron Park. The request for
rural designation was supported by a letter and materials
provided by the county judge of Cameron County and
supplemental information requested by the staff. After
reviewing the information, staff cannot confirm the rural
nature of the area and the rule requires that if staff
cannot make a determination, a recommendation of denial be
presented to the Board.

The county judge is a local government official
with authority to speak on behalf of the area in question
and his letter relates to this area alone, not the entire
county. This is important because the areas requesting
designation may not have a population that exceeds 25,000,
so although Cameron County as a whole has a population
greater than the limit, the request is limited to this
much smaller area. If the Board determines that this
threshold matter has been addressed, it must consider
whether the county judge has provided sufficient support
of the five other factors contained in the rule for his
assessment that the limited area in question is rural in
Again, this area is entirely surrounded by the City of Brownsville which is in the Brownsville-Harlingen metropolitan area. The judge has stated that the area contains a large amount of agricultural or undeveloped land, a high number of residents without sewage service and unpaved streets, and is considered by HUD and USDA and state use of CDBG and Housing Trust Fund to be rural. It's important to note that these funds sources I've just mentioned actually consider the area to be a colonia which does not necessarily equate directly to rural. The state, along with federal agencies, has been working in the colonia for more than a decade to improve the conditions that led to this original designation. And I've asked Homero to stick around in case you have any questions about colonias because he's been leading our efforts in that area.

The area does contain some developed parts, developed areas and housing that's not atypical for the City of Brownsville, it also has two elementary schools. These features are not uncommon in similarly sized rural communities throughout the state. Staff believes that deference to the county judge's assessment of all these factors considered as a whole is warranted, but because of the area's location within a major city and metropolitan
area, believes that this is a matter most appropriately handled by the Board, therefore, staff requests that the Board determine if the request for rural designation for the Cameron Park Colonia and adjacent unincorporated area is acceptable.

I'd be happy to take any questions.

MR. GOODWIN: With no recommendation from staff?

MS. HOLLOWAY: We have no recommendation.

MR. GOODWIN: Questions?

MR. BRADEN: I have a question.

MR. GOODWIN: Paul.

MR. BRADEN: So, Marni, is this colonia right next to Brownsville?

MS. HOLLOWAY: It's completely surrounded by the City of Brownsville.

MR. BRADEN: Is it raw land that's around? I mean, did they send you a map?

MS. HOLLOWAY: There's some pictures and maps in your Board book. There are parts of this area that are immediately adjacent to neighborhoods and commercial development and that kind of thing. There's a part of the area sort of to the north that's within an unincorporated area that appears to be more agricultural uses, but then if you go into the City of Brownsville a little bit
further north then that continues to be agricultural land. So it in many ways matching the surrounding area but is not part of the City of Brownsville.

MR. BRADEN: Okay. And how was the 25,000 persons measured? I mean, did they give you a geographic boundary and then made certification that within that?

MS. HOLLOWAY: The boundary is really the city limits of Brownsville that surround this area.

MR. BRADEN: But that's not what we're measuring the 25,000 by.

MS. HOLLOWAY: Within this area is where we're measuring.

MR. BRADEN: So somebody told you what within this area means.

MS. HOLLOWAY: Yes.

MR. IRVINE: If you go to the map on page 17 of the Board supplement, you can see a pretty good visual representation of the higher density development in the southwest corner and a larger swab of undeveloped land on the other side.

MS. HOLLOWAY: Right. So that more densely developed area is, in fact, the Cameron Park Colonia and the census designated place.

MR. GOODWIN: Additional questions?

(No response.)
MR. GOODWIN:  I'd like to make the recommendation that we table this and go into executive session after hearing the remainder of action items 4 to seek legal advice.

MR. BRADEN:  So moved.

MR. GOODWIN:  So moved. Second?

MS. RESÉNDIZ:  Second.

MR. GOODWIN:  All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN:  Okay. Moving on to 4(b).

MS. HOLLOWAY:  Moving on, 4(b) is presentation, discussion and possible action regarding site eligibility under 10 TAC 10.101(a)(2) related to undesirable site features for Residences of Stillwater in Georgetown.

The undesirable site features rule states that developments proposed within the applicable distance of any of the undesirable features may be considered ineligible unless the applicant provides acceptable information regarding mitigation of those undesirable site features.

A request has been submitted by an applicant proposing a 4 percent housing tax credit development in Georgetown that is within 500 feet of a railroad and acceptable mitigation for the distance was not provided. The proposed development, again, is located in northeast
Georgetown. The site is surrounded primarily by vacant land with a railroad track about 450 feet north of the site. The land between has been represented as future commercial development.

The applicant contends that based on their own research of the Federal Transportation Administration Noise and Vibration Manual, there is no minimum separation requirement between railroads and residential uses and that the manual addresses mitigation in cases where railroads might have a significant impact on noise levels. They assert that while HUD does not impose a separation distance of housing from railroads, they do prohibit developments with unacceptable noise exposures and in some instances provide for mitigation. They've represented that they are proposing to use HUD financing and will be required to comply with those standards regarding noise as a result.

So there are three operative parts of this rule to be considered. One of them is the measurement. Development sites located within 500 feet of active railroad tracks measure from the closest rail to the boundary of the development site unless the applicant provides evidence that the city or community as adopted a railroad quiet zone or the railroad in question is considered commuter or light rail. So that's the
measurement under the undesirable site features.

Also within the rule for potential mitigation where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has a smaller distance than the minimum distance as noted below -- so that would be the list of undesirable features -- then such smaller distances may be used, and documentation, such as a copy of the local ordinance identifying such distances, must be included in the application. We took a couple of these items last year about proximity to railroads, one in the Fort Worth area, one in the Valley, I don't remember exactly where; one had provided evidence of ordinance, the other did not.

Also for this year we've added language regarding cognizant ages that says: If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. This goes back to our concrete crushing plant last year, you'll remember, that was going to be really close to the plant that was going to be breaking up rocks all day long, so while TCEQ has a regulation regarding a new concrete crushing plant near a residential use, we don't have that and there's no
way for us to gather all of that so we're going to defer to those other agencies.

So the language in the rule is clear regarding the type of mitigation that could be submitted in order for staff to find the development site eligible, despite the proximity to the railroad track. In this case the applicant did not provide a local ordinance that allows a smaller distance than 500 feet, nor did the applicant provide information from a state or federal cognizant agency that would regulate how close they could put a new railroad track next to residential uses. Therefore, staff recommends that the Board find the development site ineligible. I'll be happy to take any questions.

MR. GOODWIN: Before we do that, I want to hear a motion to do questions and comments.

MS. THOMASON: So moved.

MR. GOODWIN: So moved. Second?

MR. BRADEN: Second.

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

(A chorus of ayes.)

MR. GOODWIN: Okay. Now questions for Marni?

(No response.)

MR. GOODWIN: I see we have people that want to speak. Jean, are you or John going to go first?
MR. SHACKELFORD: I'll be brief. Good morning, Mr. Chairman, members of the Board, Mr. Irvine and Mr. Eccles. I'm counsel for Pedcor, the developer on this project, but I'm going to yield my time to Ms. Latsha.

MR. GOODWIN: Okay.

MS. LATSHA: Good morning.

MR. GOODWIN: Good morning, Jean.

MS. LATSHA: I have to admit I'm looking at all of this black and channeling Johnny Cash with all of this railroad stuff. I wanted to say, Good morning, I'm Johnny Cash, but I'm not. Jean Latsha with Pedcor Investments.

I do have a couple of visuals here to give you a sense of what we're talking about. One of these was included in our original request but I want to just kind of blow it up a little bit so that you can see what we're talking about. This is the site here. It's 427 feet from the track, and then there's also a 3.3 acre tract here that's going to be commercial development, this is a to be proposed road between the commercial and the multifamily, and this is 230 single family homes that are going to be under construction shortly before us, if we're successful here, this is an elementary school and a middle school, you'll see about 260 feet the tract for the school is from the track, and then another single family development over here, only 50 feet from the tracks.
MR. IRVINE: And for the public's interest, it is also substantially the same as what's found at page 230 of the Board materials.

MS. LATSHA: Yes, that was.

This wasn't included in there, but just to give you a sense, this is that same track, that same railroad track extended through the middle of town in Georgetown. This is another single family neighborhood, Southwestern University, some student residences, more single family homes, athletic field, multifamily development, another public park, all literally right next to the railroad track.

So as Ms. Holloway said, we are asking that this site be found eligible despite its location within 500 feet of this track. The relevant rule calls for the Board to determine whether or not an applicant has provided information regarding mitigation but it does not state that a specific kind of mitigation is required or that certain forms of mitigation would not be accepted. Mitigation is defined as the act of making a condition or consequence less severe, or lessening the force or intensity of something unpleasant.

So what is it that makes proximity to this railroad unpleasant? We all know the answer, it's noise. We have offered to mitigate this situation, we've offered
to make the noise from the train less severe, less
intense, less unpleasant by using very specific design and
construction materials.

I'm going to put you to our third poster here. This is what's typically found in a noise study that's
conducted when we have to use federal funds, which we do
on this project and most of our projects, which is not
required by TDHCA, it's not required by the Tax Credit
Program. So this is not for this development, this is for
another development that actually just was approved by
TDHCA. This is actually not a train track, this is a very
busy road with a bus stop on it, but you'll see that it's
a heat mat that shows decibel ratings.

And so what HUD will do, we'll turn this in and
HUD will say, all right, if you're in this orange zone or
this red zone or this yellow zone, then you have to have
windows with sound transmission classes of 27, but if
you're in another zone, those classes need to be 32 or
higher, if you're in another zone then you have to have an
additional layer of wallboard or something. It's very
precise, it's very specific, and we follow these
guidelines in all of our developments because we do use
HUD 221(b)(4)s with our tax credit development, so that's
what we're proposing here is to conduct that noise study
and to follow the recommendations in that noise study.
So we do appreciate that the rule also states that if we were to find some other regulation, whether a local ordinance or a federal agency, that dictated an acceptable distance between a railroad and a multifamily development that TDHCA would defer to that regulation. But that provision in the rule is separate from the option to mitigate. The rule does not state that we must provide mitigation and that mitigation must be in the form of finding another regulation. That doesn't even make any sense, pointing to another regulation is not mitigation at all. Another regulation would either shorten the distance, arguably making the need for mitigation even greater, or it would increase the distance and eliminating that need for mitigation.

The fact is there are two distinct options presented in the rule: The applicant either mitigates, meaning he lives inside that 500 foot distance which potentially creates this unpleasant situation and then lessens the severity of that situation, or the applicant finds another regulation to point to. There isn't another regulation that speaks specifically to distance, so we did the first which is to provide information regarding mitigation. We provided concrete ways to minimize the noise levels created by the train, and on top of that we did point to federal agencies who do have regulations for
minimizing noise levels.

The federal agencies on both sides of this issue, the Federal Railroad Administration and HUD, have written regulations that do not dictate distance but instead directly address the unpleasant, however potentially lifesaving condition, of being near a loud train horn. But the FRA, the Federal Railroad Administration, is not going to tell multifamily developers where they can and can't build housing, and HUD is not going to tell the Federal Railroad Administration where they can and can't build a train track. HUD cares about where housing is placed, and so when evaluating sites they look at existing conditions which may or may not include a train track, so we think it appropriate to look at HUD standards in this case, and that's what we're offering as mitigation, to follow HUD standards even when it is not required by the Tax Credit Program.

All that said, I think this isn't a bad rule for TDHCA to have in place. I was having this discussion with someone else who posed that question: Well, if an applicant can always come in and solve this problem through noise mitigation, then why have the rule at all? The answer is because TDHCA doesn't have a rule about noise mitigation and there are plenty of tax credit developments that are financed without any other federal...
monies and so don't have any agency requiring it. I don't think TDHCA necessarily needs to get in the business of noise mitigation, although that could be an option in the future, the rule functions well as it is. It will require those tax credit developers who would otherwise go unchecked to do something about the noise created by nearby trains. Those developers would either pass on this site because they don't want to bother with noise mitigation, or they will be forced to mitigate. Again, we chose to mitigate which is a clear option in the rule.

I will add that because Pedcor has been utilizing HUD financing for years on developments all over the country, we've actually been doing more than what is required by TDHCA on all of our projects here in Texas. We're even mitigating for noise on one of our non-HUD 9 percent tax credit deals that is also in Georgetown, even though there is absolutely no requirement to do so. We recognize it as a benefit to our residents and are more than willing to do it. It's for reasons like that, that doing more than what is required, that has allowed us to enjoy the continued support of the City of Georgetown. The city council has already approved a resolution of support for this project and there was overwhelming community support for it and no opposition.

So we are here asking for you to find this site
eligible despite its location within 500 feet of a railroad track. We appreciate that that eligibility should come with a requirement that we follow HUD's guidelines with respect to noise.

Thank you, and I'm happy to take any questions.

MR. GOODWIN: Any questions? I have a question, Jean. You mentioned the elementary school and you said it was 227 feet?

MS. LATSHA: So the track, this is the elementary school here, this is the middle school, and this is the track, the field for both of them, this distance from the track to the railroad tracks, the running track to that is about 260 feet. I think 500 feet lands you about here and you're a little over 600 to get to the school.

MR. GOODWIN: To get to the actual school.

Okay.

Any other questions?

MR. ECCLES: I have a quick question. The second map that you showed with the train track running through -- this is Georgetown. Right?

MS. LATSHA: Georgetown.

MR. ECCLES: Is that part of the track in a quiet zone or a no horn zone?

MS. LATSHA: I did not look at where all of
them are, but when I went to the City of Georgetown to ask about their quiet zones, I was given very little information about any of them being anywhere. I don't know that they have one anywhere. I could find out.

MR. ECCLES: But there's no quiet zone or ordinance that's regulating the part of the track that's running by the proposed development site.

MS. LATSHA: Not currently, no. And I can show you where the -- this is where the train would cross a road, right, which is a little bit more than 500 feet away. Most likely when we do one of those heat maps for the sound, my guess is it would actually heat map like this way and maybe a little bit from the road, and our noise mitigation might be more in this corner and down here. It might not even be as much where that shortest distance is, it might be. But to my point, this is not something that's required by the Tax Credit Program, this is going above and beyond what's required by the Tax Credit Program to follow HUD's regulations with respect to noise mitigation.

MR. ECCLES: With respect to noise mitigation, and respectfully, the reason why the rules are silent on how to do noise mitigation may be that the 500 foot distance has more to do than just noise.

MS. LATSHA: If that's possible, I suppose, but
everything that's in the rule talks about quiet zones. I went back to some of the transcripts and discussions regarding this rule and they were about noise. My feeling is, from reading the Federal Railroad Administration, HUD, the transcripts here, the actual rule from TDHCA, that the primary concern with the train tracks is noise.

MR. ECCLES: Understood, but there is an element of community standard as well, isn't there? I mean, considering that it talks about ordinances and if there's a smaller distance that we'll go with the locals, if there's a different distance that a cognizant agency would have that we'll go with those.

MS. LATSHA: And again, the reason I think that those cognizant agencies don't have distance requirements is because situations are different. Had this been -- let's say the commercial piece had already been developed, right, and we were going to HUD and doing that noise study, they might require less noise mitigation because that noise is already filtered by the commercial development. Because the commercial development is behind us right now, we're probably going to have to do a little bit more noise mitigation than we would if we waited a year, because the problem with the train is the noise.

That's why those federal regulations -- and when you go to build a train track near a residential
development, it's the other way around, if they find there is an impact on that residential development, they make the guys building the train build a wall or whatever it is that they need to do to mitigate that noise. Everything that I've read has been about noise with respect to being near a train.

MR. ECCLES: Let me ask about the subdivision that you said of single family that's going to be on the same side of the track, and if that map that you showed was oriented properly, it would be to the southwest of the development that's proposed.

MS. LATSHA: Right, just west.

MR. ECCLES: How far along in the approval process has that come?

MS. LATSHA: It's platted and they are ready to start construction they're telling us this year probably second quarter.

MR. ECCLES: How close is the closest house platted in that subdivision?

MS. LATSHA: Fifty feet from the track.

MR. ECCLES: And this is all within the corporate limits of the City of Georgetown.

MS. LATSHA: Yes, sir.

MR. GOODWIN: Any other questions?

MR. BRADEN: I have a question of Marni. So I
find Pedcor's argument fairly persuasive, but my concern would be in terms of how this would be administered on a going-forward basis, and does the condition eligibility on meeting HUD requirements give us enough of a bright line that we can refer to when we have a half a dozen other people coming in and saying we want the same type of forgiveness, waiver?

MS. HOLLOWAY: Potentially. I think that making that kind of decision of course will shape requests in the future, that applicants will be coming in and saying we're going to do the noise mitigation so give us an eligibility determination on this property. Yes, the noise mitigation is important and if they are proceeding with the HUD financing it will be a requirement and could be a requirement that's imposed by this Board. We will find the site eligible if you do these things and then that would roll all the way through the application process and into underwriting.

The 500 feet is based on information that we found sort of combining the Railroad Administration and HUD requirements. Federal Railroad Administration says that the noise 500 feet from the suburban grade crossing is at 65 decibels; 65 decibels is the point at which HUD starts saying -- they call it normally unacceptable and allow for mitigation. Part of the consideration, though,
is that that mitigation is for the interiors of the unit, it's going to be for the inside, it's not for the outside. It's not for nice days when you have your window open, it's not for days when you're out by the pool, those kinds of things, and there is no way to mitigate that sort of environmental noise coming across.

Part of what we started talking about with this measurement a couple of years ago, and we haven't been able to find information yet that's really reliable, is how often do the trains run, what are they carrying, those kinds of potential impacts are not measurements that we've been able to reliably get to yet because of Homeland Security stuff. This could be a track that there's one train a day, there's two trains a week, or it could be -- I haven't even looked at this -- the same line that runs through Marfa and there's 20 trains a day.

MR. BRADEN: Does anybody have that information, how frequently? Do you all have that, how frequently trains go?

MS. LATSHA: I don't have that information now but that would all be part of a noise study, right, so if it were 20 trains a day, the horn was just ridiculously loud, that will all come out when we perform a noise study on this development. That's exactly why the map that I showed you earlier, that's a really, really busy road and
a road that's actually going to become even busier because there's plans to expand it, and so we actually had to revise that map to take into consideration the traffic that's going to be on that road once it's expanded and everything else. So like I said, they're very specific studies and the train traffic itself will be taken into account when that noise study is performed.

MR. BRADEN: And I do agree, Beau, that I don't think it's all noise, I mean, I do think there's risk of injury, there's all the other complications living next to railroad tracks, but apparently Georgetown has accepted that considering what they're platting right next to it.

MS. LATSHA: And I would say anecdotally, I mean, I live in a nice neighborhood and I'm 300 feet from a train track. Right? It's difficult to get 500 feet from a train track, and it's difficult too to also assess, you know, what's more dangerous: 500 feet from a railroad track or 100 feet from a busy road. It might be the second, but at the same time we're encouraged to be in urban areas where you do have high traffic and good visibility and bus stops, and guess what, those things all come with busy roads that are, I would say, more dangerous than being 500 feet from a railroad track.

MR. GOODWIN: Jean, I have a question. Beau brought up the question of how close was the nearest
platted house going to be. How close on your site is the nearest structure going to be?

MS. LATSHA: Sure. So we have a 20 foot setback so we're at 427 feet to our site boundary right now, and so then you add 20 feet, and so you're at about 447, probably more like 450 because we don't want to encroach on that setback. The site layout as it is right now, there's one residential building that's kind of long ways and the other one that is oriented the other way so that the cap of the building is by the site boundary, so you're probably talking about maybe 20 to 24 units that would be -- because they're three-story buildings, right -- that would be, I would guess, within that 500 feet.

MR. GOODWIN: Additional questions?

(No response.)

MR. GOODWIN: John, anything additional you want to add?

MR. SHACKELFORD: No, sir.

MR. GOODWIN: Okay. Marni, anything else you would like to add?

MS. HOLLOWAY: No, I don't have anything unless there are any further questions.

MR. GOODWIN: Okay. We need a motion to either accept staff's recommendation or deny staff's
recommendation.

MR. IRVINE: To find it eligible or not.

MR. GOODWIN: To find it eligible or not.

MR. BRADEN: I'll make a motion to accept the mitigating factors and find the site eligible.

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

MS. HOLLOWAY: May I?

MR. GOODWIN: Well, let's have a second first.

MS. THOMASON: Second.

MR. GOODWIN: We have a motion and a second.

Any additional comments?

MS. HOLLOWAY: Is your accepting those mitigating factors, is that a condition of eligibility?

MR. BRADEN: We would find the site eligible conditioned on the eligibility for complying with the HUD requirements on noise mitigation.

MR. GOODWIN: Do you accept that?

MS. THOMASON: Yes.

MR. GOODWIN: Any additional comments or questions?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?
MR. GOODWIN: Okay. There we have it.

MS. HOLLOWAY: Thank you.

MR. GOODWIN: Now we have item 4(c), Andrew.

MR. SINNOTT: Good morning, Chairman Goodwin, members of the Board. My name is Andrew Sinnott, Multifamily Loan Program administrator.

Item 4(c) is presentation, discussion and possible action regarding an award of Direct Loan funds from the 2017-1 Multifamily Direct Loan NOFA for the Vineyard on Lancaster in Fort Worth.

The Vineyard on Lancaster received an allocation of 9 percent housing tax credits this past July for the new construction of 104 units serving a supportive housing population, and the applicant returned in October requesting $1.1 million in Direct Loan funds from the supportive housing soft repayment set-aside. The $1.1 million would relieve the burden on Union Gospel Mission of Tarrant County, which is the sole member of the general partner entity, it would relieve the burden on their endowment fund which they're using as owner equity for this development, so it would reduce the owner equity that they're providing from $4.8 million to $3.7 million.

Having this $1.1 million also hedges against any price increases that are expected to come as a result of labor
and material shortages post Hurricane Harvey.

The $1.1 million will come from the Department's 2016 allocation of National Housing Trust Fund which requires NHTF assisted units to be targeted to 30 percent AMI households. As a result, ten 50 percent tax credit units will be further restricted to 30 percent AMI, and one 30 percent tax credit unit will be layered with a 30 percent NHTF unit, so we're getting a little deeper affordability as a result of this $1.1 million investment.

This award will be structured as a soft repayable loan in accordance with 10 TAC 13.4(a)(1)(A) of the Multifamily Direct Loan rule. And with that, staff recommends approval of $1.1 million in NHTF funds from the supportive housing soft repayment set-aside for the Vineyard on Lancaster.

MR. GOODWIN: Any questions?

(No response.)

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

MR. BRADEN: So moved.

MR. GOODWIN: Moved. Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Moved and seconded. Any other discussion, any public comment?
(No response.)

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you, Andrew.

MR. SINNOTT: Thank you.

MR. GOODWIN: Marti, 4(d).

MS. HOLLOWAY: Item 4(d) is presentation, discussion, and possible action regarding the interpretation of provisions of the Qualified Allocation Plan relating to the claiming of disaster points; the timing of submittal of resolutions of local government support or opposition and state representative input letters; and the handling of these matters by staff if they create a change in self-score that would disqualify an applicant for pre-application points. I think that's the longest one I've ever seen.

An application for 9 percent credits may receive ten points if at the time of application submission or at any time within the two-year period preceding the date of submission the development is located in an area declared to be a disaster by the governor under Texas Government Code 418.014, so it's a
very specific requirement for that declaration.

Twenty-five counties in Region 3 that have had an eligible declared disaster event will see that eligibility expire prior to the full application delivery date on March 1. The last eligible disaster declaration was made for these counties on January 26 of 2016. The Department has received multiple inquiries regarding the deadline for submitting and application that would be eligible to receive those ten points. Staff initially provided guidance that everything that would have been due with a full application on March 1, 2018 would now be due on January 26, 2017, which is two years after the date of declaration, in order to claim those ten points.

Most recently, an inquiry suggested that the expiration date of the two-year period following the declaration should be February 26, 2018 because the declaration had an effective period of 30 days, so the declaration lasted until February 26 of 2016. The prospective applicant argued that the state of disaster continues until a number of events occur, one of them being just that 30 days elapse. They argue that the area would continue to be an area declared to be a disaster, which is language in statute, until 30 days after that declaration. Staff found no evidence that the declaration issued on January 26 was renewed or terminated, and
therefore, concluded that it terminated just by effect on February 26 of 2016.

The March 31 full application delivery date is described in rule. One of the questions presented is whether the full application delivery date is an on or before date as opposed to an express requirement to submit applications only on March 1. Staff has given the guidance that submitting applications early to meet the two-year mark is acceptable. The Board must make this determination, as well as determine whether the duration of the existence of a disaster area is counted in that two-year time frame.

In addition, there is an issue regarding the appropriate date to submit materials from elected officials. Potential applicants have advised that their representatives and local governments are relying on the program calendar in rule which states as separate items within a single box. So they're distinct items but in this one box on the calendar. Full applications are due by March 1 and final input from elected officials, including local government resolutions of support and input from state representatives, is due by March 1. The Board must determine whether the undefined term "the complete application" includes both the full application and the final input from elected officials by the two-year
mark or whether the final input from elected officials may be submitted by March 1.

Complicating matters, applicants requested points for declared disaster areas in the pre-app, who do not qualify for those points as a result of the Board's action today, will suffer a penalty of the loss of six pre-application points. The pre-application final delivery date was January 9, so that die is cast, they've already submitted their pre-apps. Applicants affected by this issue may or may not have claimed points in their pre-app for this item and potentially will lose pre-application points unless the Board addresses this issue.

So there are five questions regarding this matter. One, may an applicant claim those ten disaster points under the rule if they submit their application within two years from when the declaration expired? What is the full application delivery date and does it include all of the information I mentioned? If an application is submitted prior to March 1 in order to claim points, may the applicant also provide support resolutions and letters up to and including March 1? If elected official input is allowed to be submitted by March 1, does the Board consider the balance of the application a complete application as required by statute? So if they submitted the complete application without the support information
by that expiration date, does that meet the statutory requirement? And finally, if an applicant's pre-application self-score regarding disaster points is affected by the Board's interpretation on these matters, will the difference in number of points render them ineligible for the full pre-application points?

Staff is requesting direction from the Board for applications for development sites that are in counties that have an eligible declared disaster event that will expire prior to March 1, 2018, and further, staff recommends that pre-applications affected by the Board action on this issue be allowed to adjust their pre-application points in accordance with the Board's order without penalty, which in effect waives the limitation in rule that the score between pre-application and full application may not vary by more than four points.

I'd be happy to take any questions.

MR. GOODWIN: I want to hear a motion to accept comments and questions.

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay. Now questions.
MR. BRADEN: I have one question. So without taking into account the disaster relief issue, when the March 1 deadline for a full application, do we require letters of support at that March 1 deadline?

MS. HOLLOWAY: Yes.

MR. BRADEN: So when we say a full application is due, we expect all letters of support and everything to be part of that.

MS. HOLLOWAY: Yes.

MR. BRADEN: Okay.

MR. GOODWIN: Other questions of Marni?

(A chorus of ayes.)

MR. GOODWIN: I see we have people who would like to comment. Thank you, Marni.

MR. COMBS: Yes. Ryan Combs with Palladium.

I would like to make a comment because as a development community we have to follow staff's direction, I mean, we really live and die by following staff's direction, and so much so that we have a plan, then we have rules, and then there's also a procedures manual on top of that, and then there's other direction that's just given. Staff is very prescriptive in how they would like us to do things, and as a development community we can live and die on how well we follow staff's direction, and staff gave direction that in order to receive disaster
declaration points in these certain counties, applications had to be in by January 26.

Well, then that direction was reinterpreted last week when pre-applications were due which left no time for applicants to respond, and so some of the results are, I know us, as well as many other developers, we had sites that we looked at and we thought these would be competitive but there's absolutely no way that we can go get everything that we need to support all those different things to have a full application by January 26, so we let those applications go. If we had known that that was going to be reinterpreted, we lost those opportunities. When that new direction came in when pre-applications were due, we had no time to respond to that, and so there's a real result of those things.

And so what I would like to do is I would like to make a proposal because the Texas Government Code lays out an order of how these items are to be prioritized, it doesn't necessarily give a score but it gives an order as to how items are to be prioritized. Now, it so happens that declared disaster area kind of falls between an eleven-point item and a nine-point item, and so that's where the ten points for this item comes in the QAP, however, the nine-point item just below, that's a maximum amount of points that's allowed, the nine-point item just
below this is for QCT support. Well, that nine points is a maximum, you can also get eight points, you can also get four points, so there's a scale, a range that's there.

And so what I'm requesting from the Board is that the Board recognize that the staff gave direction and there are consequences when staff gives direction to those of us in the development community that are doing our best to react to and follow staff's direction, that the Board recognize that there was direction given and that there could be a maximum points given to applications that submit before January 26, being the declaration date, and then a lesser point value given to applications, so they're still getting points but lesser point value given to applications that are submitted before the expiration of the declared disaster are.

I think statute allows that but that's something I want to put out there because we've done our best to follow staff's direction and unfortunately, when there's a change that happens with the day that pre-applications are due, it leaves really no opportunity to respond and react in the development community.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MR. COMBS: Thank you.
MS. ANDERSON: Good morning. My name is Sarah Anderson, and this is a very complicated and convoluted issue, and as was said, there's about five different issues before you. I think I'm only to address two of them. I would actually say that there's three. One would be whether or not the due date should be January 26 or February 26, and I'm not going to address that. I think that that will be a change from the way it's always been done but I think that that is also a discretionary item for you guys.

The other one that I would like to address has to do with the submission of what's considered a complete application and the submission of the local resolution of support and the state rep resolution of support. Those two items have always been distinctly separate from the application. As a matter of fact, they both used to be due April 1, further proof that they were never part of the full application to begin with or considered to be part of the complete application. The QAP specifically actually says that those items can go directly to the Department and that the Department will add them to the application on the website, so they are not considered part of the full application.

And when you look at the definition, it's not completely defined, the only time the complete application
is mentioned in the QAP says that it is essentially an application where all of the exhibits that are required to be in the application are there. Again, these two exhibits are distinctly separate and not considered to be part of a complete application. So I would argue that the state rep support and the local support resolution are separate and can be submitted separately.

The other issue comes up is whether or not people should be penalized for how they took the disaster points. We sat here a month ago and somebody brought this issue up before you and it was said these disaster points are going to be tricky, and it was requested that the pre-app not take into consideration the disaster points. It was put before you, this decision, Marni told you the pre-application has always included the disaster points, that's the way it's always been done. To then come back a month later and have this re-litigated because somebody didn't make the right decision doesn't seem very fair.

I would say we advised our clients, who spent a lot of money hedging their bet on this, who split their sites, submitted two applications, put a lot of money to make sure that they would be on the right side of whatever decision was made, and everybody else could have done the same thing. And to now come back and say, well, we already discussed it, we already litigated, we already
told you what our decision was, but now that some people aren't happy we're going to come back and change how we're going to address the scoring for a disaster seems like a really bad precedent. I don't want to be here in July arguing that my clients lost their deal because the rules were changed. Somebody will be harmed for making a change, whereas, the harm on this side without making the scoring change is something we did to ourselves in our own decisions.

Thank you.

MR. GOODWIN: Thank you. Any questions?

(No response.)

MS. LATSHA: Good morning again. Jean Latsha for the third time.

I will agree with Sarah with respect to the pre-application points. You know, we all had the same information, whether that information changes or not, staff said January 26, whether that should be a February 26 deadline or a January 26 deadline or whatever, all of that information was out there, we all could have read statute and made our own decisions on what that should be, all the language is there. You make a decision on January 9, you claim the points or you don't, maybe that's based on how far you are in your own application process, maybe it's based on staff's guidance, maybe it's based on your
own research of statute, whatever, but it's a decision we make and I do think that everybody should have to live with the decision they made when they claimed points or not on their pre-application.

That being said, I think that staff could stand by their January 26 deadline when you read the rule. The language says -- let's see, what does it say -- let's see, let me find it -- an application may receive ten points if at the time of application submission or at any time within the two-year period preceding the date of submission the development site is located in an area declared to be a disaster. I think you could take that phrase "declared to be a disaster" as it was declared on January 26. The language didn't say something like was considered to be in a state of disaster within the last two years.

I think you can read it and read the statutory language on both sides and say that, you know what, January 26 is the deadline for those ten points, that's what staff said, that's the information everybody took when they were turning in their pre-apps, and then issue is over. I know that there's a lot of arguments on both sides of the fence here but I think there's a legitimate argument for keeping the January 26, keeping the pre-app points how they are and moving along. And that's all I
have.

MR. GOODWIN: Okay. Any questions?

(No response.)

MR. MICHAELS: Good morning. Thank you. My name is Russ Michaels. I represent a few clients on this matter, I'm a lawyer.

First of all, I just want to kind of bring up something -- I haven't really prepared for this -- staff has done an excellent job this year of getting us information early so that we can start early, and it's been amazing. I know in the roundtables last year, part of the reason that they gave us the rules and they gave us the QAP and they gave us things early so that we could actually start finding land early, and a lot of us relied on a lot of the information that was kind of going towards the December 1 governor-approved deadline. When the governor came in and changed everything, shifted the disaster declaration, that's fine because he has the ability to do that, but the good faith that staff has done for us to get us information early has been fantastic.

I know last year a lot of stuff happened on the back-end. We were here in July arguing about as the crow flies because of something that was interpreted early and it hurt a lot of developers on the back-end. Now we're on the front-end where we're talking now about interpretation
issues and I think we have a good chance of keeping
everything static so that it doesn't disrupt as much.

Now, I can tell you from experience that the
majority of people that are talking about this topic are
talking about two counties, Collin and Dallas County.
It's really just affecting one area. Now, I don't want to
say that across the board because there are some counties
in there, but this is where the heavy hitter issue really
is. My clients have gone to their state rep, they've
gotten their resolutions of support, they're teed up,
ready to serve you a January 26 application that's full,
it's got every single thing in it, because that's what we
relied on.

I would request that that stay static because
that's what staff told us and that moving forward
everybody else that wants to claim ten points does what
we've been doing, we've been busting our rears to get that
in because we knew that that's what the governor had said,
that's what the staff told us to do. And so if you're
going to claim ten points, then do it based on the 26th of
January, not trying to say, hey, let's move this to
February 26 so we can give you a piecemeal full
application prior to March 1 which is kind of how it's
been for the last five years, ten years, or as long as
I've been in the program.
So again, just as a recap, I appreciate what staff has done, I really do. They gave us a lot of great language this year, they went in and cleaned up the QAP, they cleaned up the language, last year we had issues with it. They gave us a fantastic rule book, they gave us a fantastic QAP this year, we started early, we got some really good sites, but to shift everything right on some of the developers, especially the ones up in Dallas where there's probably 40-50 different applications up there that are wanting this to go one way or another, I think it would be detrimental.

And as far as the good faith that we've actually developed between staff and the developers from what went down last year, I think keeping it static would be the best way to go at this point.

Thanks for your time.

MR. GOODWIN: Any questions? Any additional comments?

(No response.)

MR. GOODWIN: If not, the Board is going to move into executive session, so if you'll allow me the opportunity to read this, then we will come back.

Motion to table first.

MR. BRADEN: I'll make a motion to table this and consult with attorneys in executive session.
MR. GOODWIN: Okay. And a second?

MS. THOMASON: Second.

MR. GOODWIN: Moved and seconded. Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or executive session at this time, pursuant to Texas Government Code 551.071 to seek and receive the legal advice of its attorney.

The closed session will be held in the anteroom of this room, John H. Reagan 140, within the John H. Reagan State Office Building. The date is January 18 and the time is 9:15, and we will reconvene back here at 9:30.

(Whereupon, at 9:15 a.m., the meeting was recessed, to reconvene this same day, Thursday, January 18, 2018, following conclusion of the executive session.)

MR. GOODWIN: The Board is now reconvened in open session at 10:16 a.m. 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 I will accept a motion to take of the table item 4(a).

MS. THOMASON: Yes, I'll make a motion.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: It's made and seconded. All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Do I hear a motion on item 4(a).

MS. THOMASON: I would like to make a motion to approve the request for the rural designation.

MR. GOODWIN: Okay. Do I hear a second?

MR. BRADEN: Second.

MR. GOODWIN: They can't hear back there. Could you speak up a little bit.

MS. THOMASON: I said, I would like to make a motion to approve the request for rural designation.

MR. GOODWIN: And it's been seconded. Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. 4(a) is passed.

Now I'll hear a motion to take off the table item 4(d).

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

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

All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Do I hear a motion on item 4(d)?

MR. BRADEN: Yes. I'm going to make a motion that the two-year disaster period be measured from the date that the governor took action to declare the area a disaster area, so in this instance that we're talking about, that would be measured from the January 26, 2016 date; that any date within the application acceptance period may be the full application delivery date, so the March 1 is a due by date so people can file between that period; three, that all items, including the local government resolution and the state rep letters, must be
submitted for the application to be complete, and therefore, must be submitted within the two-year period in order to claim disaster points, and again, that two-year period would be measured from the January 26 date, the declaration date. That's my motion.

    MR. GOODWIN: Okay. Do I hear a second?

    MS. RESÉNDIZ: Second.

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

Any discussion, questions?

    (No response.)

    MR. GOODWIN: All those in favor say aye.

    (A chorus of ayes.)

    MR. GOODWIN: Opposed?

    (No response.)

    MR. GOODWIN: Motion passed.

Thank you, Marni.

We've hit a point in the agenda where we take public comments for any further items, so any comments from staff or anyone in the public?

    (No response.)

    MR. GOODWIN: Seeing none, I will entertain a motion to adjourn.

    MR. BRADEN: So moved.

    MR. GOODWIN: Second?

    MS. THOMASON: Second.
MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Thank you.

(Whereupon, at 10:20 a.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: January 18, 2018

I do hereby certify that the foregoing pages, numbers 1 through 67, 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.

01/23/2018
(Transcriber) (Date)

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